



Legal Protection for Buyers in Good Faith as a Result of the Cancellation of Transfer of Rights Based on a Court Decision

Farastya Enanggi Kistriana^{1*}, Hari Purwadi², Airlangga Surya Nagara³
Universtas Sebelas Maret Surakarta

Corresponding Author: Farastya Enanggi Kistriana farastya07@gmail.com

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ABSTRACT

This study uses a normative legal research method with a case study approach, which is prescriptive and analytical in nature. It focuses on Supreme Court Decision Number 3507 K/Pdt/2023, where a bona fide buyer who acquired land rights through a valid sale before a PPAT and had a certificate in his name suffered losses due to the cancellation of the sale and purchase deed declared legally flawed. The results show that Indonesia's land registration system adheres to a negative publication system with a positive tendency, so certificates do not guarantee ownership. The cancellation of rights creates legal uncertainty for bona fide buyers who meet the valid agreement requirements under Article 1320 KUHPperdata. Stronger legal protection is needed both preventively and repressively to achieve justice and legal certainty.

INTRODUCTION

Land is a vital resource in Indonesian society, serving strategic social and economic functions. Therefore, the state, through Law No. 5 of 1960 concerning Basic Agrarian Principles, established a land registration system to ensure legal certainty and protection for rights holders. Article 32 paragraph (2) of Government Regulation No. 24 of 1997 provides protection for buyers who acquire land in good faith and actually control it, with the provision that a lawsuit against the certificate can only be filed within five years of its issuance.

In a positive publication system, parties registered as land rights holders obtain comprehensive legal protection, so that their rights are permanent and cannot be contested. Conversely, in a negative publication system, legal certainty is not fully guaranteed for registered rights holders because the state is not responsible for the accuracy of the data contained in the certificate. Indonesia implements a negative publication system that has a positive tendency, because during the registration process, a certificate is issued that contains both physical and legal data regarding the land in question. This can be seen in Article 19 Paragraph (2) letter c of the Basic Agrarian Law, which states that land registration includes the issuance of documents certifying rights, which serve as strong evidence.

Land has the characteristic of being transferable and assignable to another party. One important characteristic of national land law is that the transfer of land rights is part of a legally regulated land registration mechanism. The transfer takes place through a legal act, whereby the land rights are transferred from the previous rights holder to the new rights holder. This transfer process begins with an examination of the certificate at the Land Office to ensure the validity and accuracy of the data. Once the results of the examination have been declared valid, the Land Deed Official (PPAT) is authorised to draw up a Deed of Sale and Purchase (AJB) as the legal basis for the transfer of land rights.

Regulations concerning the sale and purchase of land ownership rights are implemented through two systems, namely registration of deeds and registration of title. The application of the registration of deeds system is evident in the practice of land title transfers, where legal actions in the form of transfers of rights from the seller to the buyer are recorded and registered. Based on the provisions of Articles 1457 and 1458 of the Civil Code, sale and purchase is defined as an agreement that creates an obligation for one party to transfer ownership rights to an object, while the other party is obliged to pay the agreed price. An agreement between the parties is sufficient to give rise to a legal sale and purchase relationship, even if the transfer of land rights and payment of the price have not yet been carried out. However, the transfer of land rights to the buyer must be followed by additional legal action in the form of a legal transfer through a change of name process at the Land Office as a form of legalisation of the buyer's position as the rightful holder of the rights.

LITERATURE REVIEW

In the context of legal protection for bona fide land purchasers, the relevance of the case can be seen in Supreme Court Decision Number 3507 K/Pdt/2023. In that case, the purchaser acquired land from a seller who already

had a land title certificate, and the sale and purchase transaction was carried out in the presence of a Land Deed Official (PPAT) as the authorised official. Based on land law provisions, the sale and purchase of land up to the stage of certificate issuance is only possible if the land being sold has been confirmed to be free from legal issues. This certainty is obtained through a process of examining the data and history of the certificate at the land office to ensure that the land being transacted is not in dispute, is not blocked, is not encumbered by any liens, and is not subject to any lease agreements.

The process of buying and selling land that has reached the stage of certificate issuance essentially indicates that all legal procedures have been carried out in accordance with the provisions of the law, including the stage of checking the land history, which is carried out correctly before the certificate is issued. However, in a civil case at the Supreme Court level relating to a buyer acting in good faith, as stated in Decision Number 3507 K/Pdt/2023, the panel of judges ruled that the deed of sale and purchase contained legal defects, and therefore declared it null and void. However, the sale and purchase transaction in question had been carried out in accordance with the applicable mechanisms and had resulted in the issuance of a certificate. This case originated from a land sale and purchase transaction between the seller and the buyer that took place at the home or clinic owned by the third defendant.

The certificate of ownership of the land was then transferred and registered in the name of the buyer acting in good faith. However, after the transfer process was completed, the buyer discovered that the land that had legally become his property was in fact collateral for a private debt agreement between the plaintiff and the third defendant. In this case, the plaintiff, Retno Probawati, as the seller and the party who owed a debt to the third defendant, filed a lawsuit against several parties, namely the first defendant, Roy Pudyo Hermawan, S.H. (Notary/PPAT), Defendant II Anita Susanty, Defendant III H. Triyo Sugeng as the lender, Defendant IV Henky Indresworo as the buyer, and the co-defendant, the Batu City National Land Agency Office.

The subject matter of the lawsuit filed by the plaintiff stems from a loan he took out from PT Bank Muamalat Indonesia Malang Branch in the amount of Rp350,000,000.00 (three hundred and fifty million rupiah). As he was unable to repay the loan, the plaintiff then entered into a private debt agreement with the third defendant. In the agreement, it was agreed that the collateral used would be two Freehold Title Certificates (SHM), namely SHM Number 681 and SHM Number 682, both of which are located in Bumiaji District, Batu City. However, because the plaintiff again failed to repay the debt within the agreed period, the third defendant acted as an intermediary in the land sale and purchase process between the plaintiff and the fourth defendant. In this transaction, the fourth defendant, as the buyer, was unaware of the private debt agreement between the plaintiff and the third defendant.

Legal studies on legal protection for buyers acting in good faith show dynamic developments, particularly in the context of procedural irregularities in the transfer of rights that are subsequently cancelled, causing losses to the buyer. Various previous studies have highlighted similar issues, such as the transfer of

rights based on private sale and purchase agreements, inheritance disputes, and sales conducted by unauthorised parties. However, research on the cancellation of transfers of rights decided by the Supreme Court and rooted in private debt agreements, as in Supreme Court Decision Number 3507 K/Pdt/2023, is still rare. In this case, legal issues arise concerning the conflict between the protection of bona fide buyers and the application of the principles of contract law in the context of sales and the transfer of land rights. Therefore, this study uses Supreme Court Cassation Decision Number 3507 K/Pdt/2023 as the main object of study to examine how the court interprets the legal relationship of land sales and purchases based on agreements with repurchase rights.

In practice, the negative publication system in land registration still leaves legal loopholes that allow other parties to file lawsuits over ownership, even against buyers who have acted in accordance with the law. This phenomenon is illustrated in Supreme Court Decision Number 3507 K/Pdt/2023, in which a legally valid deed of sale was annulled because it was based on a private debt agreement between the seller and a third party. This situation demonstrates the legal uncertainty for buyers acting in good faith and raises doubts about the effectiveness of legal protection mechanisms in Indonesia's land registration system.

Based on the above background, the following problems can be formulated: (1) Why are sale and purchase agreements based on debt transfer considered invalid?; and (2) How can the interests of bona fide land buyers be protected in the event of cancellation of the transfer of rights?

Based on the research questions outlined above, this study analyses and examines the legal certainty of land sale and purchase processes based on debt transfer, as well as the legal protection for buyers acting in good faith in land sale and purchase transactions where the transfer of rights is subsequently cancelled based on a Supreme Court decision.

METHODOLOGY

This research is legal research (doctrinal research) that places law as a positive norm that applies in society. The approach used is the case approach, with the main object being Supreme Court Decision Number 3507 K/Pdt/2023. The sources of legal material consist of: (1) Primary legal material, in the form of the Civil Code, UUPA, Government Regulation No. 24 of 1997, Government Regulation No. 37 of 1998 in conjunction with Government Regulation No. 24 of 2016; and (2) Secondary legal material, in the form of books, journals and relevant theses on legal protection and the principle of good faith.

The analysis technique used the deductive method, which draws conclusions from general legal principles and applies them to specific cases. This approach was used to examine how the principles of legal certainty and legal protection are applied to buyers acting in good faith who are harmed by the cancellation of the transfer of rights.

DISCUSSION

1. Sale and Purchase Agreement based on Debt Transfer

Article 1457 of the Civil Code states that a sale and purchase is an agreement whereby one party undertakes to transfer an asset and the other party undertakes to pay the agreed price. Based on this definition, a sale and purchase imposes two obligations, including:

- a. The seller is obliged to deliver the goods that are the subject of the sale to the buyer
- b. The buyer has an obligation to pay the price of the goods they have purchased to the seller

In customary law, the sale and purchase of land is understood as a legal action aimed at transferring land rights from the seller to the buyer. This transfer process is carried out simultaneously with the settlement of the land price, which is paid in cash. Therefore, in the customary law system, the transfer of land rights does not automatically occur solely because of an agreement or payment of the price, but still requires additional formal legal actions to realise the transfer of rights legally.

This provision emphasises the fundamental difference between the agreement element in a sale and purchase and the transfer of rights. The agreement between the parties and cash payment are the requirements for a valid sale and purchase agreement, while the legal transfer serves as a mechanism that realises the concrete and legally accountable transfer of rights. This separation between the consensual and constitutive aspects is important in ensuring legal certainty for the parties involved, especially for the buyer as the recipient of the land rights.

The transfer of ownership rights to the buyer is legally valid if it has been carried out through a legal transfer. This transfer is constitutive in nature because without this action, the process of transferring land rights does not have full legal legitimacy. This provision is in line with Article 1459 of the Civil Code (KUHP_{Perdata}), which states that the transfer of ownership in a sale and purchase only occurs after a valid transfer has been made. Thus, even though a land sale and purchase agreement is consensual, the legal consequence of the transfer of ownership only arises after the legal transfer process has been carried out.

According to legal provisions, the transfer of land rights can be carried out through several mechanisms, including sale and purchase, exchange, grant, and testamentary grant. The validity of such transfers depends on the fulfilment of legal requirements, namely that the recipient has met the requirements as the holder of the rights and that the party transferring the rights has the intention to carry out the transfer. Therefore, various forms of land rights transfers arise as a result of legal mechanisms that are explicitly regulated in legislation, including the following:

- a. Transfer

The transfer of land rights does not always occur through a specific legal action, but can take place automatically based on applicable legal provisions. One example is inheritance without a will, where land rights are legally transferred to the heirs upon the death of the testator. In this context,

land law regulates the procedures for controlling inherited land and the procedures for issuing proof of ownership documents for the heirs. Based on the provisions of Article 61 paragraph (3) of Government Regulation Number 24 of 1997 concerning Land Registration, if an application for registration of transfer of rights due to inheritance is submitted within six months from the date of death of the testator, the registration process is exempt from fees.

b. Transfer or assignment of right

The transfer of land rights occurs when the rights holder consciously performs a legal action to transfer their rights to another party. Generally, this legal action is carried out in cash while the rights holder is still alive, except in the case of a bequest. Through this mechanism, the land rights are legally transferred to the recipient of the rights. The forms of transfer of rights can occur through:

- 1) Sale and Purchase
- 2) Gift
- 3) Contribution to a Business Entity (*inbreng*)
- 4) Bequest or *Legaat*

The validity of an agreement is measured based on the fulfilment of the validity requirements as stipulated in Article 1320 of the Civil Code. Subjective requirements relate to the agreement and competence of the parties, while objective requirements include a specific object and a lawful cause. A breach of the subjective requirements renders the agreement voidable (*vernietigbaar*), while a breach of the objective requirements renders the agreement null and void (*nietig van rechtswege*).

A land sale and purchase agreement based on the transfer of debt is essentially not an objective requirement, particularly the element of 'lawful cause'. This is because the agreement was not made with the intention of genuinely transferring ownership rights, but rather to guarantee the repayment of debt. Thus, the sale and purchase transaction arising from the debt agreement is simulatory in nature, i.e. it appears to be a sale and purchase agreement but in substance it is a loan agreement with land as collateral.

According to Article 1335 of the Civil Code, an agreement without cause or with false cause has no legal force. Furthermore, Article 1337 of the Civil Code stipulates that a prohibited cause is one that is contrary to the law, morality, or public order. In this case, the cause underlying the sale and purchase is invalid because it is contrary to the principles of honesty and legal certainty, and violates the principle of prudence in land legal transactions.

In addition, Article 37(1) of Government Regulation No. 24 of 1997 concerning Land Registration stipulates that the transfer of land rights can only be registered if proven by a deed made by a PPAT. However, the deed made by the PPAT in this case was based on an invalid agreement, so the resulting deed lost its legal basis. An authentic deed born of an invalid agreement does not have probative force as a perfect piece of evidence, because the deed no longer reflects the true intentions of the parties.

The Supreme Court in this ruling stated that a land sale and purchase agreement based on the transfer of debt is null and void. The panel of judges emphasised that the substance of the relationship between the parties was not an actual sale and purchase, but rather a debt agreement with land as collateral. Therefore, the deed of sale and purchase used as the basis for the transfer of ownership of the certificate was considered legally flawed.

This ruling is in line with previous Supreme Court jurisprudence, such as Supreme Court Decision No. 2696 K/Pdt/1984 and Supreme Court Decision No. 3233 K/Pdt/1992, which essentially confirm that 'a sale and purchase agreement that is actually a debt agreement with land collateral is null and void'. The principle upheld is that legal substance takes precedence over formal form. This means that even if the deed of sale and purchase was drawn up before a PPAT, if there was no real intention to transfer rights, the agreement is invalid.

In this case, the buyer (defendant IV) was considered to be acting in good faith because they purchased the land based on a formally valid deed and had gone through the process of transferring the title at the Land Office. However, because the basis for the transfer of rights originated from an invalid debt relationship, the rights obtained by the buyer had no legal basis. This raises serious issues regarding legal certainty and protection for buyers acting in good faith.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced as it should be, that those who are entitled can obtain their rights, and that those who are guilty receive their punishment. Legal certainty also means that there is order and regularity in society because the law is enforced firmly and consistently.

In the context of this case, there is tension between two legal values: substantive justice and formal legal certainty. On the one hand, legal certainty requires that every legal act that has fulfilled administrative procedures (such as AJB and certificate registration) be recognised as valid. However, on the other hand, substantive justice requires that the content and purpose of the agreement be in accordance with the true legal intent.

Sudikno emphasised that legal certainty does not only concern the certainty of written regulations, but also certainty in their implementation. In this case, when a sale and purchase agreement turns out to be fictitious and contrary to the legal purpose, its cancellation by the court is a manifestation of the application of substantive legal certainty. This means that even though the administrative action has been completed, if the material basis is invalid, legal certainty cannot be maintained.

However, from the perspective of a buyer acting in good faith, the cancellation of a transfer of rights without legal protection reflects legal uncertainty. Indonesia's land registration system, which adopts negative publication with a positive presumption, does not fully protect parties who acquire rights based on trust in certificate data. Buyers who have fulfilled all legal procedures may still lose their rights if it is proven that the underlying agreement is invalid.

Thus, the application of the theory of legal certainty in this case must be viewed comprehensively: formal legal certainty is achieved when legal procedures are carried out in accordance with regulations; while substantive legal certainty is realised when the substance of the legal relationship does not violate the principles of civil law and the principle of honesty in agreements. The cancellation of a land sale and purchase agreement based on debt is a form of judicial correction of legal practices that deviate from the objectives of land law.

2. Legal Protection for the Interests of Land Purchasers Acting in Good Faith Due to Cancellation of Transfer of Rights

Legal protection for bona fide land purchasers is a crucial issue in Indonesia's land law system, particularly in cases that result in the cancellation of transfer of rights by the court. The cancellation of transfer of rights after the sale and purchase process has been carried out in accordance with formal legal procedures creates legal uncertainty for purchasers, especially when purchasers have fulfilled all administrative requirements and acted in good faith.

According to the theory of legal protection put forward by Philipus M. Hadjon, legal protection is divided into two types, namely preventive legal protection and repressive legal protection.

a. Preventive Legal Protection

Preventive legal protection has the primary objective of preventing the emergence of disputes or legal problems. Through this mechanism, legal subjects are given the opportunity to express their opinions or objections before a government decision is finalised. The presence of this mechanism serves to encourage the government to be more careful in determining policies, especially those related to the application of the principle of *freies ermessen*. In addition, the public also obtains the participatory right to submit objections and views on decisions to be taken.

b. Repressive Legal Protection

Repressive legal protection aims to resolve problems or disputes that have already occurred. The main basis of this mechanism is the concept of recognition and protection of human rights. This principle forms the basis for setting limits and regulating obligations, both for the government and the community, in carrying out any legal action.

In the case of Supreme Court Decision Number 3507 K/Pdt/2023, a land purchaser who had fulfilled the legal requirements of the agreement and obtained a certificate through a PPAT (Notary Public) was declared ineligible to own the land because the basis for the transfer was categorised as originating from a debt agreement that was deemed to be fraudulent. In fact, the buyer was not aware of the previous debt agreement and had acted in good faith. This situation created a dilemma between the application of the principle of legal certainty and the principle of substantive justice, in which the buyer was disadvantaged even though he had adhered to the applicable legal procedures.

The land law system in Indonesia, as regulated in Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) and Government Regulation No. 24 of 1997 concerning Land Registration, aims to provide legal certainty and legal protection for land rights holders. In a registration system that adheres to the

principle of negative publication with a positive tendency, certificates only serve as strong evidence, but not absolute proof. This means that the state does not fully guarantee the material truth of the data contained in the certificate, so it is still possible for other parties who claim to have stronger rights to file a lawsuit.

In this context, the position of buyers acting in good faith becomes vulnerable. When a deed of sale is declared invalid due to a legal defect in a previous legal action (for example, due to a debt agreement), the buyer loses legal protection even though they have carried out a transaction that is administratively valid. This situation shows that the law does not yet fully provide preventive legal protection to parties who act in accordance with procedures. In fact, Hadjon emphasised that the essence of legal protection lies in guaranteeing certainty and justice for every citizen in the face of potential abuse of authority or the consequences of weaknesses in the legal system itself.

Supreme Court Decision Number 3507 K/Pdt/2023 describes the legal conflict between the plaintiff (the original owner of the land involved in the debt agreement) and the buyer (defendant IV) who legally purchased the land through a PPAT and had obtained a certificate. The Supreme Court declared that the deed of sale and purchase was null and void because the object of the sale and purchase was essentially collateral for a debt between the plaintiff and the third defendant. Thus, the sale and purchase process was considered a legal ploy to transfer rights to land that was not yet free from encumbrances.

When viewed from the perspective of legal protection theory, the decision is indeed in line with the principle of formal validity of legal acts, but it ignores the aspect of substantive justice for buyers acting in good faith. Purchasers who have fulfilled the legal procedures as stipulated in Article 37 of Government Regulation No. 24 of 1997, namely conducting transactions before a PPAT, checking certificates at the land office, and obtaining certificates in their name, should receive proportional legal protection. In this case, the cancellation, which resulted in the loss of ownership rights without adequate compensation, violated the principle of repressive legal protection mandated by Hadjon, whereby the law should be a means of restoring rights to parties who have been unfairly harmed.

Preventive legal protection for bona fide purchasers should be reflected in a land administration system that can guarantee that the data in the certificate is free from dispute. However, practice shows that the negative publication system opens the door to overlapping claims. In case 3507 K/Pdt/2023, an off-the-books debt agreement was not recorded in the land administration, so the buyer did not have access to information about the status of the land as collateral. This condition shows the weakness of the public information system in land registration.

Referring to Hadjon's view, preventive legal protection should be realised through mechanisms that provide citizens with the opportunity to ascertain the potential for disputes or legal burdens on the object of the transaction before the legal action is taken. In this context, the state has an obligation to create a system of transparency of land information, for example through the integration of data

on collateral agreements, encumbrances, and active disputes. Thus, buyers can make rational and safe legal decisions.

Other preventive measures can be taken by strengthening the authority and responsibilities of PPATs in the substantial verification process. PPATs are not only responsible for the formal form of deeds, but must also conduct material examinations of the validity of the legal relationship between the parties involved in the transfer. This prudential principle is a manifestation of preventive legal protection for the community in land transactions.

If the cancellation of rights has occurred, then the relevant form of protection is repressive legal protection, namely efforts to restore the rights of the aggrieved party through legal proceedings. Repressive legal protection aims to restore the situation to its original position (*restitutio in integrum*), or at least provide fair compensation for the losses incurred.

In this case, the buyer lost his rights to the land even though he had paid the full purchase price and obtained a certificate. However, there was no compensation mechanism from the state, the PPAT (Land Deed Official), or the seller. This situation demonstrates a lack of legal instruments that guarantee protection for buyers acting in good faith after a cancellation decision. Ideally, the Supreme Court, in its considerations, should not only assess the formal validity of the agreement, but also provide proportional legal remedies to buyers acting in good faith, either in the form of compensation or conditional ownership protection.

The absence of such a mechanism gives the impression that the law only favours formalities, not a sense of justice (*gerechtigheit*). Therefore, the establishment of new norms or revisions to Government Regulation No. 24 of 1997 is necessary to confirm the legal status of *bona fide* buyers, including compensation procedures when their certificates are legally cancelled.

According to Hadjon, legal protection can be negative, namely protection against arbitrary actions by the government or officials, and positive, namely active efforts by the government to create conditions that guarantee the rights of citizens. In the context of land, the role of the state through the National Land Agency (BPN) and PPAT should be positive, namely providing guarantees for the validity of legal data that forms the basis for the transfer of rights.

However, in practice, this responsibility remains purely administrative. The National Land Agency only functions as a registrar, not as a guarantor of legal substance. As a result, if the transfer of rights is cancelled due to legal defects in the deed, the buyer loses protection even though they have obtained a certificate issued by the state. This situation demonstrates the weak implementation of positive legal protection as intended by Hadjon. In other words, the state fails to provide protection against the legal consequences of its own actions (the issuance of certificates).

Legal protection serves as a mechanism to protect the public from arbitrary actions by authorities that are not in line with legal norms. The main purpose of legal protection is to create social order and peace so that every individual can enjoy their dignity as a human being. Legal protection is also provided when a person loses their rights as a result of unlawful actions by

another party, so that the rights to the land are transferred to an unauthorised party. In such circumstances, the aggrieved party has the right to file a lawsuit in court to reclaim their rights to the land.

CONCLUSIONS AND RECOMMENDATIONS

The Supreme Court's ruling that the Deed of Sale is legally void implies that the transfer of land rights is not recognised, so that the certificate registered in the buyer's name must also be cancelled by the National Land Agency. This situation means that the buyer, despite having acted in good faith, loses ownership rights and only has the option of demanding a refund or compensation from the seller – a step that in practice is often difficult to achieve. In addition, the cancellation of the deed also gives rise to restitution obligations and potential legal liability for the Land Deed Official (PPAT) who is deemed to have been negligent in carrying out their duties. The weak legal protection for buyers in this situation is due to the judicial system's orientation towards formal legal certainty, namely by returning rights to the rightful owner, while the aspect of justice for buyers acting in good faith has not been fully fulfilled. Therefore, strengthening legal protection mechanisms is necessary through state responsibility, increased supervision of PPATs, and the implementation of land transaction guarantee fund policies so that the principle of substantive justice can truly be realised in land practice.

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Kistriana, Purwadi, Nagara

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