

Reconstruction of law protection of land buyers with good intention in Indonesia based on justice value

Hartopo¹, Ahmad Rofiq², Umar Ma'ruf³

¹ Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

² Faculty of Law State Islamic University of Walisongo Semarang, Indonesia

³ Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

Abstract

This study aims to determine and analyze law protection for land buyers who have had good intentions when buying the land, to know and analyze the causes or factors that result in law protection for land buyers with good intentions that do not reflect a sense of justice and to find the reconstruction of law protection for land buyers with good intentions that could reflect the value of justice. The study was conducted in the perspective of the Constructivism paradigm with the type of socio-legal research and qualitative approach methods. Data used in this research are from interviews and questionnaires supported by literature, legislation and various public documents, while the data analysis was carried out by the method of qualitative critical analysis. The results of the study show that the law protection of buyers who have made repayments in the sale and purchase of problematic land is not fair, this is due to the legal culture of the seller who is often dishonest regarding the status of the land, and the existence of third parties related to the seller who also demands the rights to a land which is also detrimental to the buyer. There is an effort through the judiciary in its development although it is quite long and expensive, so it is necessary to reconstruct regulations regarding the technical supervision of land sale and purchase in Indonesia so that it can better reflect the value of justice.

Keywords: reconstruction, land buyers, justice value

Introduction

The Deed of land Purchasing is an authentic deed meant as the strongest evidence that has an important role in every legal relationship in regard to land ownership in the life of the community that can explicitly determine rights and obligations so as to guarantee legal certainty and at the same time, to avoid disputes. If there is a dispute, the authentic deed of land purchasing can act as an evidence as it is the strongest evidence and has perfect evidentiary power in court ^[1].

In regard to the authentic deed of land purchasing, as stated in the Article 1867 of the Civil Code which reads:

"Evidence in writing is carried out in authentic writing (deed) or under hand (deed)".

This article means that a deed is a valid evidence in an agreement as an authentic deed is a letter that is made by or in front of a competent public employee who will make it, creating sufficient evidence for both parties and their heirs as well as all those who have rights from it, namely regarding all matters mentioned in the letter and also about what is stated in the letter as a notification only, but what is then said is only what is being told is directly related to the subject of the deed.

Regarding to the authentic deed of land purchasing is also regulated in Article 1868 of the Civil Code, which in particular regarding the authentic deed of land purchasing, which reads: An authentic deed of land purchasing is a deed made in a form prescribed by law by or in front of a public

official who is authorized to do so in place. The value of the power of evidence attached to the authentic deed of land purchasing, especially in the sale and purchase agreement regulated in article 1870 of the Civil Code in conjunction with Article 285 of the RBG is: perfect and binding, so that the authentic deed of sale and purchase can stand alone without the need for help or support of other evidence.

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

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

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

With the transfer of the land ownership right, the new owner will get his / her land and is obliged to register it at the local Land Office, which previously made the deed before the

¹ Yubaidi, Ricco. (2020). The Future of Land Ownership Regulation in Indonesia. International Journal of Multicultural and Multireligious Understanding. 6. 712. 10.18415/ijmmu.v6i6.1236.

Land Titles Registrar (PPAT). Transfers of land rights and ownership rights to housing units through sale and purchase, exchange, grants, income in companies, and other legal actions of transfer of rights (except auction) can only be registered if proven by deeds made by the authorized PPAT. An authentic deed of sale and purchase may be canceled by the District Court if there is evidence stating that the authentic deed of land purchasing was made legally flawed by examination at court. Because of how the land purchasing deed can be canceled because it contains legal flaws that must be proven in court can often incur a disadvantage to the land buyers who had good intentions because their rights are not fulfilled even though they have carried out all their obligations by good will. So to get his rights, a buyer with good intentions must take a long legal route, spend additional time and cost as the examples of some cases of land purchasing deed. Some of the example of this dispute are such as

1. Case number 48 / Pdt.G / 2018 / PN Kds, in this case a land buyer with good intentions must take the execution route at the Kudus District Court to get his rights because the previous owner did not want to give up control of the land that had been sold.
2. Case number 4 / Pdt.G / 2019 / PN Kds, in this case the previous land owner sued the buyer who had good intentions by planning an illegal act that seemed to have been carried out during the land sale and purchase transaction in the hope that the court could invalidate the land certificate. Published by the National Land Agency. However, the facts of the trial proved that the plaintiff only fabricated the story and in this case the Kudus District Court decided that the lawsuit was unacceptable and sentenced the plaintiff to pay trial fees.
3. Case number 14 / Pdt.G / 2018 / PN Kds in this case the plaintiff is a buyer with good intentions who has carried out all his obligations in the process of buying and selling land but the seller does not want to give up the land object that is being traded so that the buyer with good intentions must file a lawsuit to the Kudus District Court to be able to get his rights. The Kudus District Court partially disregarded the lawsuit and stated that the plaintiff was the legal owner of the land.

Based on this background, the researcher then conduct a research with the following issues

1. Why is the current law protection of land buyers with good intention in Indonesia does not reflect the value of justice?
2. How is the reconstruction of legal protection for land buyers with good intention in Indonesia based on the value of justice?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge^[2]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of *Empirical-Juridical*^[3], which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

As for the source of research used in this study are

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data^[4]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Reason Why The Current Law Protection Of Land Buyers With Good Intention In Indonesia Does Not Reflect The Value Of Justice

Often times in the community in carrying out the sale and purchase does not pay attention to the importance of the authentic agreement deed made by the Land Titles Registrar. This is largely due to its large fee although authentic deeds have a function, namely strengthening proof of ownership of objects including land, and can also be used as evidence when there is a dispute over the object of ownership of the object as in accordance with Article 1867 of the Civil Code which reads:

"Evidence in writing is carried out with authentic writing (deed) or with writings (deed) under hand".

Buying and selling land is often carried out with the principle of mutual trust, so that the existence of authentic deeds is often ignored. Apart from that, the honesty of a seller regarding the object of the land he is selling is often overlooked. This is often in the form of land status that is sold, often in disputes, most of which are related to inheritance disputes. Buyers who lack knowledge regarding efforts to obtain information about land are often tricked into buying disputed land, which in the end, the buyer also has to pay court fees related to the status of the land that has been purchased.

Then the sale and purchase of land often does not pay attention to the balance between the rights of the buyer and the seller. The formulation of article 1517 of the Civil Code states that:

³ Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normative*, Bayumedia, Surabaya.

⁴ L. Moleong, (2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

² Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

"If the buyer does not pay the purchase price, the seller can demand cancellation of the purchase according to the provisions of articles 1266 and 1267".

As an essence in buying and selling, it is in line with the seller's right not to hand over the material before it is paid, then the buyer should also be given the right that he is not obliged to pay if he cannot own and control and utilize and enjoy the purchased property safely. And peaceful, unless it has been released by him.

As regulated in article 1516 of the Civil Code which states that:

"If the buyer, in his control, is disturbed by a lawsuit based on a mortgage or a claim to ask for the return of his goods, or if the buyer has reason to worry that he will be disturbed in his control, then he can postpone the payment of the purchase price, until the seller has stopped the disturbance, unless the seller chooses to provide a guarantee or if it has been agreed that the buyer is obliged to pay even with all disturbances".

Article 1491 in conjunction with Article 1492 of the Civil Code is more emphasized and states that the coverage which is the obligation of the seller to the buyer is to guarantee 2 things, namely:

a. With the District Court ("PN") decision stating that the sale and purchase was null and void, the sale and purchase agreement was deemed to have never existed and had no legal consequences from the start. If the PN's decision has permanent legal force, then the decision can only be executed. Thus, all obligations such as payments must be returned in full to return to their original state such as there was never a sale and purchase. For that, your money should be returned the amount he or she paid.

b. If the money which is the right of the buyer is not returned, while there has been a decision from the PN that the sale and purchase is null and void, then all forms of obligation (payment) that have occurred are also canceled and must be returned. After the verdict has permanent legal force, the steps you can take are to submit a request for execution to the District Court who decided the case.

c. If the verdict has not yet been executed, then the seller and his or her heir who agree to the sale can be reported to the police based on Article 216 paragraph (1) of the Criminal Code (KUHP). The official referred to in the article refers to Article 92 of the Criminal Code, one of which is a judge. Thus, because the decision is a judge's decision, if there are parties who do not comply and implement the decision, they can be punished based on Article 216 paragraph (1) of the Criminal Code.

As stated in the article above, the buyer can file a criminal charge against the seller and his or her heir who agree to the sale if the seller still does not enforce the decision after submitting a request for execution to the District Court who decided the case. The Sale and Purchase Agreement (PPJB) made before a notary is an authentic deed (vide: Article 1868 of the Civil Code). In relation to the authentic deed, Article 1870 of the Civil Code has confirmed that deeds made before a notary have perfect evidentiary power as stated in the Article 1870 of the Civil Code:

"An authentic deed provides between the parties and their heirs or people who get rights from them, a perfect proof of what is contained therein."

For information, the sale and purchase binding agreement (PPJB) is an agreement made by prospective sellers and potential buyers of a land / building as an initial binding

before the parties make a Sale and Purchase Deed (AJB) in the presence of a Land Titles Registrar (PPAT). Usually PPJB will be made by the parties because of conditions or circumstances that must be implemented by the Parties before conducting AJB before PPAT. Thus PPJB cannot be equated with AJB which is evidence of transfer of rights over land / building from the seller to the buyer. If there are parties who use the PPJB as evidence in their lawsuit after 10 (ten) years the PPJB is made. This can be done by the party if there is something that is disputed by the parties in an agreement or with other parties who get rights from the PPJB. Thus, if there are other parties outside the parties in the PPJB, who are being sued in the case, the complaining party must be able to prove that there is a legal relationship between the plaintiff and parties outside the PPJB.

The case as mentioned above is in fact in line with the Permanent Jurisprudence of the Supreme Court through the Supreme Court Decision No. 4 K / Rup / 1958 dated 13 December 1958, which has a legal principle as follows:

"To be able to sue someone before a court is an absolute condition that there must be a legal dispute between the two parties in a case".

In addition, considering that the time span from the making of the PPJB until the case rolled in the court has not exceeded the expiration period determined by law to prosecute, which is 30 (thirty) years, as stipulated in Article 1967 of the Civil Code, which reads as follows:

"All lawsuits, both material and individual in nature, are canceled because they have expired after thirty years, while whoever shows the existence of such expiration does not need to demonstrate a reason for rights, after all, it cannot be brought forward against something that is based on his bad intention".

PJB is an agreement between the sellers to sell his property to the buyer made with a notary deed. PJB can be made for certain reasons, such as the payment of the sale and purchase price has not been paid and the taxes arising from the sale and purchase have not been paid. There are two kinds of PJB, namely paid PJB and non-paid PJB. PJB in full is made when the buying and selling price has been paid in full by the buyer to the seller but the AJB cannot yet implement it, because among other things the sale and purchase taxes have not been paid, the certificate is still being processed and so on. The PJB articles state when the AJB will be implemented and the requirements. The PJB paid off also states the power of the seller to the buyer to sign the AJB, so signing the AJB does not require the presence of the seller. PJB paid in general is made for transactions on objects of sale and purchase that are outside the working area of the notary or the PPAT concerned. Based on the PJB paid off, an AJB can be made in front of the PPAT at the location where the object is located. PJB is not paid in full, is made if the payment of the sale and purchase price has not been paid in full by the seller. In the non-paid PJB articles, at least the amount of down payment paid at the signing of the PJB deed, the method or terms of payment, when the payment is made and the sanctions agreed upon if one of the parties is in default. PJB not paid off must also be followed up with AJB at the time of repayment.

2. Reconstruction Of Legal Protection For Land Buyers With Good Intention In Indonesia Based On The Value Of Justice

In order to answer the above problems, the writer maintains

the view that in realizing an order in society, there are three things that are needed as stated by Gustav Radbruch ^[5], namely justice, decency, and legal certainty. These three things as stated by Gustav Radbruch are stated as basic legal values. The three basic values include:

The value of justice. In fact, the concept of justice is very difficult to find a benchmark because fairness for one party may not necessarily be felt by the other party. The word justice comes from the word Just, which means that it can be accepted objectively. Furthermore, according to Aristotle ^[6], there are several definitions of justice, including equality-based, distributive, and corrective justice. The first one that is Equality-based justice is based on the principle that the law binds all people, so that the justice that the law intends to achieve is understood in the context of equality. The similarity referred to here consists of numerical equality and proportional equality. Numerical equality has the principle of equality of everyone before the law, while proportional equality is giving everyone what is their right. Then, the Distributive justice, this is synonymous with proportional justice, where distributive justice begins with the granting of rights according to the size of the service, so that in this case justice is based on equality, but according to each portion (proportional). And Lastly, The Corrective justice, in essence, is justice that rests on correcting an error, for example if there is a person's mistake that causes harm to another person, then the person who causes the loss must provide compensation (compensation) to the party who receives the loss to restore his condition as the result of mistakes made.

The value of certainty, According to Syafruddin Kalo ^[7], said that, "legal certainty can be seen from two angles, namely certainty in the law itself and certainty due to the law." Furthermore, Syafruddin Kalo stated that: "Certainty in law means that each legal norm must be formulated with sentences in it that do not contain different interpretations". The result will lead to law-abiding or non-compliance behavior. In practice, many legal events arise, where when faced with the substance of legal norms that govern them, sometimes it is unclear or imperfect so that different interpretations arise which consequently will lead to uncertainty. Certainty in law means that each legal norm must be formulated with sentences in it that do not contain different interpretations. The result will lead to law-abiding or non-compliance behavior. In practice, many legal events arise, where when faced with the substance of legal norms that govern them, sometimes it is unclear or imperfect so that different interpretations arise which consequently will lead to uncertainty.

The value of usefulness, according to Jeremy Bentham, as quoted by Suwardi Sagama ^[8] is that:

"The law can only be recognized as law, if it provides maximum benefit to as many people as possible."

⁵ Gustav Radbruch, (1973), *Rechtphilosophie, Philosophy of Law*, Kochler : Stuttgart, p.164.

⁶ Aristotle, in Sihombing, Irene. (2018). Land Ownership Based On National Land Law in Indonesia. NOTARIL: Jurnal Kenotariatan. 3. 65. 10.22225/jn.3.1.683.65-74.

⁷ Syafruddin Kalo, (2007), "Penegakan Hukum yang Menjamin Kepastian Hukum dan Rasa keadilan Masyarakat" Paper, Presented on "Pengkukuhan Pengurus Tapak Indonesia Koordinator Daerah Sumatera Utara", on March 2007.

⁸ Suwardi Sagama, (2016), Analisis Konsep Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Pengelolaan Lingkungan, Mazahib, Vol XV, No. 1 (Juni 2016), Pp. 20-41.

In relation to the statement above, for example, a judge's decision will reflect expediency, when the judge does not only apply the law textually and only pursue justice, but also directs the expediency to the interests of the parties in litigation and the interests of society in general. This means that in applying the law, the judge should consider the final result, whether the judge's decision brings benefits or benefits to all parties.

Theoretically, according to Satjipto Rahardjo ^[9], between the three basic legal values, sometimes occurred a tension relationship. This means that the three basic values have different demands. This is because in every process of realizing these three basic values it is inseparable from the complex interests of individuals or groups in society. The tension relationship problem resulted in obstruction of law enforcement in its various dimensions.

In its development, interpreting law as a set of regulations that govern society, it means that in fact it is supported by a system of firm and clear sanctions so that justice can be upheld. Justice in question is indicative justice, not absolute justice, which imposes a sentence based on legal procedures and clear and basic reasons, in the sense that it is not based on feelings of solidarity, compromise or other reasons that are far from a sense of justice. This is in accordance with the article 27 of the 1945 Constitution of Indonesia.

The process to achieve justice is a link that must not be separated from at least the formulation of laws and regulations, the occurrence of legal cases or events, to verbal processing in the police and prosecution, or lawsuits in civil cases, and then ends with a judge's verdict. Obtaining permanent legal force so that the quality of the process is actually a guarantee of the quality of the culmination point of the results or benefits of a set of laws and regulations made. Thus, it is very important for the upholding of the rule of law in our country. Harold J. Laksi as quoted by Sabian ^[10] said that "citizens are obliged to obey certain laws only if they satisfy their sense of justice." With regard to the law protection of buyers in the sale and purchase of land in the UUPA is actually quite good, therefore the reconstruction of law as intended by the author is more on monitoring the existing sale and purchase of land which means that it is necessary to make special technical regulations related to the supervision of the sale and purchase of existing land, in which the technical regulations need to be regulated, namely:

1. It is necessary to have a partnership institution that is able to progressively supervise, prevent, take action against problematic land sale and purchase funds and seek to recover losses suffered by land buyers. The elements in this partnership institution consist of National Land Bodies, City and / or Regional Planning Bodies, Academics, Law Enforcement, as well as elements that represent the community.
2. It is necessary to regulate the types of administrative sanctions, civil and criminal sanctions against land sellers who have bad ethics which result in losses for land buyers in purchasing a problematic land.
3. It is necessary to regulate the existence of consumer assistance in the process of buying and selling land.
4. It is necessary to arrange for the execution without

⁹ Satjipto Rahardjo, (2009). Mendudukkan Undang-Undang Dasar, Penerbit Genta Publishing, Yogyakarta, p.26.

¹⁰ Sabian Utsman, (2007), Anatomi Konflik dan Solidaritas Masyarakat Nelayan, Yogyakarta: Pustaka Pelajar, p.15.

having to go through the court related to problems from the seller which resulted in the obstruction of the right of the land buyer to immediately use the land that has been purchased.

5. It is necessary to create an information system that can be easily accessed by the community regarding the status of land ownership, this is to keep buyers from buying disputed land, or also avoiding fraud under the guise of buying and selling land.

Conclusion

1. The Law protection of buyers who have made payment in the sale and purchase of problematic land in Indonesia is not yet just, this is due to the legal culture of the seller who is often dishonest regarding the status of the land, and the existence of a third party related to the seller who also demands rights over a land which is also detrimental to the buyer as the existence of efforts through the judiciary in its development is quite long and expensive.
2. To answer this problem, a legal reconstruction is required which specifically related to the technical regulations for the sale and purchase of land in which the technical regulations that need to be reconstructed are: 1) There is a need for a partnership institution that is progressively capable of supervising, preventing, taking action against the funds for sale and purchase of problematic land and exploitation. recovery of losses suffered by land buyers. 2) It is necessary to regulate the types of administrative sanctions, civil and criminal sanctions against land sellers who have bad ethics which result in losses for the land buyer in the sale and purchase of problematic land. 3) It is necessary to regulate the existence of consumer assistance in the process of buying and selling land. 4) It is necessary to arrange for execution without having to go through a court regarding the ownership of the land which has been transferred to the buyer. 5) It is necessary to establish an information system that can be easily accessed by the community regarding land ownership status.

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