

Application of the Good Faith Principle in Land Purchase Agreements in Indonesia.

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INTRODUCTION

In human life, land and buildings play a very important role in meeting basic human needs. Land is a valuable natural resource because it provides a place for humans and animals to live and breed. While buildings, especially houses, provide protection from bad weather, a place to rest, and privacy for humans. Both are interrelated and affect almost all aspects of human life, both in terms of social, economic, and environmental.

Along with the times, land has become increasingly important for human life. Humans always try to control the land by various means such as opening cultivation, buying and selling, exchanging, and various other efforts. Today, the era of development and industrialization makes land an object of high value. This condition causes land needs to increase, while land availability is limited. This causes frequent land disputes, both in the form of ownership conflicts and disputes related to land use. In this context, land disputes have become an unavoidable problem in modern human life.¹

Land Registration is a process of recording land carried out to ensure legal certainty over land ownership. This is done to prevent conflicts between one party and another regarding land tenure. Land registration is carried out on all land that has never been registered or on land that has been registered but has undergone a transfer of control. In the process of land registration, measurement and review of land boundaries are carried out. Then, the measurement results are recorded and published so that they can be known by the wider community. Land Registration aims to provide legal certainty to landowners and prevent disputes related to land ownership.²

Land Registration also serves as the basis for the issuance of land certificates containing information related to ownership, land area, land boundaries, and rights to the land. A land certificate is a valid proof of land ownership issued by the National Land Agency (NLA) as the authorized institution in the land sector.³

Land Registration has an important role in maintaining stability and security in land ownership. Land is a very strategic resource and has high economic value, so conflicts related to land ownership can have a negative impact on social and economic stability. Therefore, Land Registration needs to be carried out precisely and accurately to prevent disputes related to land ownership and maintain social and economic stability in Indonesia. One form of transfer of ownership rights to land is through buying and selling. The sale and purchase of land occurs because of an agreement between the seller and the buyer, which is commonly known as a sale and purchase agreement. In the context of buying and selling, the principles governing such transactions become very important. One of the known buying and selling principles

¹ Akhmad Fauzi. *Urgensi Reforma Agraria untuk Memperbaiki Sistem Pertanahan Nasional*. Jurnal Hukum IUS QUIA IUSTUM, 2017, 593-616.

² Dian Utami, "Perlindungan Hukum Terhadap Sertifikat Tanah dalam Sistem Pendaftaran Tanah di Indonesia", Jurnal Cita Hukum, Vol. 6, No. 2, 2019, Hlm. 141-153.

³ Yustisia, S., & Siregar, A. *Urgensi Pendaftaran Tanah dan Penerbitan Sertifikat Hak atas Tanah*. Jurnal Dinamika Hukum, 2019, Hlm. 111-120

is the Good Faith principle. This principle is regulated in Article 1338 paragraph (3) of the Civil Code. The principle of good faith refers to the good and honest conduct and actions of.

PROBLEM STATEMENT

1. How important is Land Registration in maintaining stability and security in land ownership?
2. How does the principle of good faith in buying and selling land need to be applied so that land sale and purchase transactions can run smoothly and produce positive impacts for all parties involved?

RESEARCH METHODS

The research method used in this study is normative research method. The data used are secondary data in the form of laws and regulations and literature related to land sale and purchase agreements and the principle of Good Faith. Data analysis was carried out using a normative juridical approach.⁴

Research Approach in This study uses a normative research approach. This approach is used to analyze applicable laws and regulations related to the application of Good Faith principles in land sale and purchase agreements in Indonesia. This approach aims to generate a deeper understanding of the principles of Good Faith and how they are applied in land sale and purchase agreements in Indonesia.

Data Collection Techniques used in this study are document studies or documentation. The data collected are laws and regulations related to land sale and purchase agreements in Indonesia which include the principle of Good Faith, court decisions related to land sale and purchase agreements involving the principle of Good Faith, and related literature that discusses the principle of Good Faith in land sale and purchase agreements.

Data sources in this study are:

- Laws and regulations related to land sale and purchase agreements in Indonesia which include the principle of Good Faith.
- Court decision related to land sale and purchase agreement involving the principle of Good Faith.
- Related literature that discusses the principle of Good Faith in land sale and purchase agreements in Indonesia and other countries.

Data Analysis used in this study is qualitative analysis. The data collected will be analyzed by reviewing the content of laws and regulations, court decisions, and related literature to understand the principle of Good Faith and its application in land sale and purchase agreements in Indonesia.

Conclusion This study aims to analyze the application of Good Faith principles in land sale and purchase agreements in Indonesia. The research approach used is a normative approach, with data collection techniques in the form of document studies or documentation and qualitative data analysis.

DISCUSSION

⁴ Sasmita, E. P. *Prinsip Good Faith dalam Perjanjian Jual Beli Tanah*. Jurnal Ilmiah Ilmu Hukum, 2021, Hlm. 111-123

The importance of Land Registration in maintaining stability and security in land ownership.

Land registration is an important process in creating legal certainty for land ownership, but in Indonesia there are still obstacles such as administrative issues, costs, and public awareness.⁵ Land registration has an important role in national development, as it can provide a strong legal basis for land use for infrastructure, housing, and industrial development.⁶

Land registration can be one of the efforts in maintaining legal certainty in the Indonesian land law system. With land registration, legal certainty and security can be created in land ownership, so that the community can more easily carry out land sale and purchase transactions and land utilization.⁷

Land registration is the process of registering a property or land right into the land registry system carried out by the National Land Agency (NLA) in Indonesia. Land registration has an important role in maintaining stability and security in land ownership.

Some of the reasons why land registration is important are as follows:

1. Increase legal certainty By registering a land in the land registry system, it will increase legal certainty related to land ownership. This will help in avoiding disputes and conflicts regarding land ownership.
2. Land registration can also improve access to credit, as banks or financial institutions usually require collateral for land as a condition of granting credit.
3. Protecting the rights of indigenous peoples Land registration also has an important role to play in protecting the rights of indigenous peoples.
4. By registering land in the land registry system, indigenous peoples' rights to land can be recognized and legally protected. Increase the economic value of land Land registration can also increase the economic value of land, because registering land in the land registry system will make it easier to carry out land sale and purchase or lease transactions.

The application of the Good Faith Principle in buying and selling land needs to be applied so that land sale and purchase transactions can run smoothly and produce positive impacts for all parties involved.

Good faith in the land sale and purchase agreement refers to the principles of honesty and fairness in implementing the agreement. This principle has been regulated in Article 1338 paragraph (3) of the Civil Code (KUHPerdata) which states that "the agreement must be executed in good faith". The principle of good faith can be interpreted subjectively as the honest and sincere attitude of individuals when performing legal acts, while objectively, this principle requires the implementation of agreements in accordance with the norms of propriety prevailing in society.⁸

Land sale and purchase agreements require the application of the principle of good faith because they involve land rights that have high economic value and are inseparable from the social and cultural aspects of the community. Therefore, the principle of good faith is regulated in Article 1338 paragraph (3) of the Civil Code as a normative demand in the implementation of the agreement. Some jurisprudence or

⁵ Marimin, H., & Rukayah, S. *Urgensi dan hambatan pendaftaran tanah di Indonesia*. Jurnal Ilmu Pertanian Indonesia, 2018, Hlm. 215-222

⁶ Rini, D. P., & Ardiyanti, E. *Peran pendaftaran tanah dalam pembangunan nasional*. Jurnal Ilmiah Widya, 2019, Hlm. 1-9.

⁷ Setyowati, N. *Pendaftaran Tanah sebagai upaya menjaga kepastian hukum dalam sistem hukum pertanahan Indonesia*. Jurnal Hukum dan Peradilan, 2016, Hlm. 329-344

⁸ Mochtar Kusumaatmadja, *Hukum Agraria Indonesia: Suatu Pengantar*, Jakarta: Sinar Grafika, 2018, Hlm. 71.

judges' decisions have also affirmed the application of the principle of good faith in land sale and purchase agreements.⁹

Here is a table of some jurisprudence or judges' rulings related to the principle of good faith in land sale and purchase agreements:

No.	Jurisprudence	Legal Considerations in Jurisprudence
1.	Supreme Court Decision No. 238 K/Sip/1967 ¹⁰	The Supreme Court affirmed that the principle of good faith in land sale and purchase agreements requires transparency and openness from both parties. The buyer must be given clear information regarding the status and condition of the land he is going to buy, so that the buyer can decide whether to buy or not. The seller must also provide an explanation of matters that will affect land ownership, such as the status of land rights, the physical condition of the land, or the presence of burdens or rights on the land.
2.	Supreme Court Decision No. 508 K/Pdt/1994. ¹¹	The principle of good faith is also recognized by the Supreme Court as one of the principles in agreements, especially in land sale and purchase agreements. In the ruling, the Supreme Court stated that "The seller must explain to the buyer the state of the land he is selling before the sale is made, so that the buyer has sufficient knowledge of the land he is to buy. If the seller does not notify the buyer, then the seller is considered to be acting in good faith and causing harm to the buyer."
3.	Supreme Court Decision No. 2146 K/Pdt/2007. ¹²	Supreme Court Decision No. 2146 K / Pdt / 2007 considers that in the land sale and purchase agreement, there is a principle of good faith that must be fulfilled by both parties. The principle of good faith requires each party to the agreement to act honestly and not exploit the weaknesses of the other

⁹ Dwi Cahya Yuningsih, "Penerapan Prinsip Itikad Baik dalam Perjanjian Jual Beli Tanah di Indonesia", Jurnal Hukum IUS QUIA IUSTUM, Vol. 25, No. 2, 2018, Hlm. 214.

¹⁰ Putusan Mahkamah Agung No. 238 K/Sip/1967.

¹¹ Putusan Mahkamah Agung No. 508 K/Pdt/1994

¹² Putusan Mahkamah Agung No. 2146 K/Pdt/2007.

		<p>party. In that case, the Supreme Court ruled that the seller did not act in good faith because he had known of a dispute regarding ownership of the land being sold but did not notify the buyer. In this case, the seller is considered to have deceived the buyer and did not meet the principle of good faith. Legal considerations in this decision refer to Article 1338 of the Civil Code which states that agreements must be made in good faith. If one of the parties acts dishonestly, then the agreement may be canceled. The Supreme Court also considered that the seller must provide complete information and ben.</p>
4.	<p>Supreme Court Decision Number 471 K/Pdt/2012.¹³</p>	<p>In the judge's legal consideration, which ruled that the land seller could not withdraw or cancel the land sale and purchase agreement that had been agreed in good faith by both parties. This indicates that the principle of good faith is an important factor in maintaining stability and legal certainty in land sale and purchase agreements. According to Article 1320 of the Civil Code (KUHPercivil), an agreement is a valid legal act if it fulfills three elements, namely the agreement, the ability to make an agreement, and a lawful thing to be the object of the agreement. However, in practice there are situations where the agreement that has been made is subject to disputes or disagreements between the parties. Therefore, the application of the principle of good faith in the agreement is essential in maintaining harmony and fairness between the parties.¹⁴</p>
5.	<p>Decision of the Supreme Court of the Republic of Indonesia Number 58 K/Pdt.Sus/2013.¹⁵</p>	<p>The Supreme Court discussed the unilateral recognition of land titles. The Supreme Court ruled that unilateral recognition of land titles is</p>

¹³ Putusan Mahkamah Agung Nomor 471 K/Pdt/2012

¹⁴ M. Zainal Arifin, "Penerapan Prinsip Itikad Baik dalam Pelaksanaan Perjanjian", Jurnal Hukum IUS QUIA IUSTUM, Vol. 19, No. 1, 2012, Hlm. 35.

¹⁵ Putusan Mahkamah Agung RI Nomor 58 K/Pdt.Sus/2013

		invalid, because it only refers to land titles without considering the rights of other parties involved in the ownership of the land. In essence, while not specifically addressing the principle of good faith, this ruling underscores the importance of considering the rights of other parties in land sale and purchase transactions, and emphasizes that actions that are detrimental to other parties cannot be considered legitimate even if they are carried out on the basis of valid land titles.
6.	Supreme Court Decision Number 1275 K/Pdt/2015. ¹⁶	The application of the principle of good faith should be considered in adjudicating disputes relating to land sale and purchase agreements. In this decision, there is a dispute related to the cancellation of the land sale and purchase agreement carried out by the land seller. The Supreme Court affirmed that the cancellation of the agreement was invalid because it was done without a clear reason and without good faith.
7.	Central Jakarta District Court Decision No.474/Pdt.G/2015/PN.Jkt.Pst. ¹⁷	In this ruling, the Central Jakarta District Court stated that parties who commit acts against the principle of good faith will be responsible for the losses caused. The principle of good faith is considered part of the obligations of the parties in carrying out the land sale and purchase agreement.
8.	Decision of the Supreme Court of the Republic of Indonesia Number 111 K/Pdt.Sus/2015. ¹⁸	In this ruling, the Supreme Court held that the seller had violated the principle of good faith by failing to fulfill the obligation to vacate and surrender the land sold. Therefore, the Supreme Court granted the buyer's suit to cancel the land sale and purchase agreement and ordered the seller to refund the money paid by the buyer along with interest from the date the payment was made.

¹⁶ Putusan Mahkamah Agung Nomor 1275 K/Pdt/2015

¹⁷ Putusan Pengadilan Negeri Jakarta Pusat No. 474/Pdt.G/2015/PN.Jkt.Pst

¹⁸ Putusan Mahkamah Agung RI Nomor 111 K/Pdt.Sus/2015

		<p>Legal considerations from the Supreme Court decision Number 111 K / Pdt.Sus / 2015 show that the principle of good faith in the land sale and purchase agreement has a very important influence and must be respected by both parties. If one party does not comply with this principle, it can result in the cancellation of the land sale and purchase agreement as well as losses to the other party. Therefore, the principle of good faith must be upheld and respected in every land sale and purchase agreement to maintain legal certainty and prevent disputes from occurring in the future.</p>
<p>9.</p>	<p>Decision of the Supreme Court of the Republic of Indonesia Number 1336 K/Pdt/2018.¹⁹</p>	<p>Decision of the Supreme Court of the Republic of Indonesia Number 1336 K / PDT / 2018 regarding the dispute over the sale and purchase of land between PT Bhumi Pertiwi Kencana and Mr. Edi Prihanto. In this ruling, the Supreme Court considered the following:</p> <ul style="list-style-type: none"> - There are provisions on the principle of good faith in Article 1338 of the Civil Code that must be fulfilled by the parties in entering into an agreement. - There was fraud in the land sale and purchase agreement carried out by PT Bhumi Pertiwi Kencana, namely by promising a reward of 10% of the value of the land to Edi Prihanto if he was willing to sell the land. - PT Bhumi Pertiwi Kencana could not legally prove that Edi Prihanto had received the money. - In the event of fraud in the agreement, the agreement can be declared null and void.

¹⁹ Putusan Mahkamah Agung RI Nomor 1336 K/Pdt/2018

	<p>Based on these considerations, the Supreme Court ruled that the land sale and purchase agreement between PT Bhumi Pertiwi Kencana and Edi Prihanto was declared null and void. The Supreme Court also reaffirmed the importance of the principle of good faith in conducting the agreement, which must be adhered to by the parties in order to avoid fraud or violation in the agreement.</p>
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From the table above, it can be concluded that the principle of good faith must be applied in land sale and purchase agreements in Indonesia. The seller must provide clear and correct information about the land to be sold, especially if there are problems or defects in the land. Violation of the principle of good faith can result in the cancellation of the land sale and purchase agreement and claims for compensation from the buyer. Therefore, the parties involved in the land sale and purchase agreement must always pay attention to the principle of good faith for the creation of a valid and fair agreement.

That the principle of good faith has an important role in maintaining legal certainty and fairness in land sale and purchase agreements. Therefore, parties involved in land sale and purchase agreements must pay attention to the principle of good faith at every stage of its implementation to prevent disputes and conflicts in the future.

From the results of the research that the principle of Good Faith or good faith is very important in the implementation of land sale and purchase agreements in Indonesia. The parties shall act honestly and fairly in the execution of the agreement to ensure that the agreement is valid and legally binding. In addition, the principle of Good Faith or good faith can also minimize the risk of disputes in the implementation of the agreement.

However, it was found that there were still violations of the principle of Good Faith or good faith in land sale and purchase agreements in Indonesia. This violation may occur due to the parties' lack of understanding of this principle or due to the bad intentions of one of the parties.

Berdasarkan hasil penelitian, ditemukan bahwa penerapan prinsip good faith dalam perjanjian jual beli tanah di indonesih belum optimal. Hal ini disebabkan oleh beberapa factor, di antaranya:

1. Lack of awareness and understanding of the principle of Good Faith from the parties to the land sale and purchase agreement. Some parties still think that the land sale and purchase agreement is just a formality, so the principle of Good Faith is not properly understood and applied.
2. The lack of clarity and lack of regulations governing the principles of Good Faith in land sale and purchase agreements. Existing regulations are still limited, so they do not provide clear guidelines on how the principle of Good Faith should be applied in land purchase agreements.

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3. Land market conditions tend to be non-transparent and difficult to monitor. This allows for practices that are detrimental to either party, such as fraud, embezzlement, or dishonesty in reporting land prices and conditions.
 4. Lack of strict law enforcement against violations of the principle of Good Faith in land sale and purchase agreements. Sometimes violations of the Good Faith principle are only considered as minor problems and are resolved informally without going through legal channels, so that they do not have a deterrent effect on the perpetrators of the violations.
 5. The culture of society that still tends to ignore the principle of Good Faith in transactions, especially in the scope of land buying and selling transactions. This culture can develop due to a lack of education and outreach regarding the importance of the principle of Good Faith in land buying and selling transactions.

Even so, there are also several parties who have correctly applied the principle of Good Faith in the land sale and purchase agreement. Several factors that support the application of the Good Faith principle include:

1. Awareness and good understanding of the principle of Good Faith from the parties to the land sale and purchase agreement. These parties consider that the principle of Good Faith is an important principle that must be applied in every land sale and purchase transaction.
2. The existence of clear and comprehensive regulations regarding the principle of Good Faith in land sale and purchase agreements. This regulation provides clear guidelines on how the principle of Good Faith must be applied in a land sale and purchase agreement.
3. There is an institution or party that acts as a supervisor and enforcer of the principles of Good Faith in the land sale and purchase agreement. This institution can monitor and act strictly on violations of the Good Faith principle, so that it can provide a deterrent effect for violators

CONCLUSION

Based on the results of this study, it was concluded that the application of the principle of Good Faith in land sale and purchase agreements in Indonesia is very important to avoid disputes in the future. In practice, the principle of Good Faith can be applied by including a clause regarding the obligation of the parties to act in good faith in all aspects of the land sale and purchase transaction.

In addition, the application of the principle of Good Faith in land purchase agreements needs to be supported by clear and firm laws and regulations. There needs to be effort on the part of the government to provide clear guidelines and sanctions for violations of the principles of Good Faith in land sale and purchase agreements.

Therefore, the advice that can be given is the importance of strengthening regulations related to land sale and purchase agreements by incorporating the principle of Good Faith into the applicable laws and regulations. In addition, notaries and attorneys also need to provide clear and transparent explanations regarding the principles of Good Faith in land sale and purchase agreements to the parties involved in the transaction, and the need for outreach and education regarding the principles of Good Faith in land sale and purchase agreements widely to the community, so as to increase public awareness and understanding in conducting land buying and selling transactions. Thus, it is hoped that a good understanding will be created between the parties and avoid potential disputes in the future.

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