

## THE GOOD FAITH OF THE BUYER WHO CONTROLS THE LAND BASED ON THE LAND SALE AND PURCHASE RECEIPT (SUPREME COURT DECISION NUMBER 801 K / PDT / 2022)

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### ABSTRACT

In Land Law in Indonesia, valid evidence for someone to prove himself as the holder of land rights is the existence of a land certificate in which the name of the right holder is written. With the land certificate, the holder of land rights already has juridical power over the land. Through land certificates that provide juridical control, land rights holders are also entitled to physical control of the land. The position of the landholder whose name and land has been registered is strong which is guaranteed certainty and legal protection. In the event that land becomes the object of sale and purchase, there are conditions and characteristics of buying and selling land that must be met in order for the legal act to be valid. To prove that there has been a sale and purchase of land, it is necessary to prove the existence of a Sale and Purchase Deed made by the Land Deed Making Officer. With the deed, the sale and purchase of land can be registered with the Land Office to provide legal certainty and protect the buyer as the holder of new land rights. The problem is when the process of buying and selling land stops at the process of paying prices only. Meanwhile, the buyer has mastered the land based on the receipt of payment of the sale and purchase price. For this reason, it is necessary to examine the good faith of buyers in buying and selling land in cases based on Supreme Court Decision Number 801 K / PDT / 2022. This research used normative legal research, which was carried out through literature studies. Research methods in analyzing and processing data are carried out qualitatively and are descriptive analytical with deductive logic conclusions.

**Keywords:** Good faith, land tenure, receipts

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### INTRODUCTION

Land and man have a close attachment relationship with each other. Apart from the human need for a land to erect buildings on it or cultivate land, it can also prosper the life of its landowner by gardening and farming. Given the need for land continues to increase along with the increasing population and the existence of less land, land can even be traded and has high economic value. Before buying and selling land, the seller must of course be the legal owner of the land. Proof that he is the holder of legal land rights is evidenced by a land certificate from the object of sale and purchase in which the name of the seller is listed.

A land certificate is a legal proof of land ownership according to land law in Indonesia. This is mentioned in Article 19 paragraph 1 letter c of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. In the event that a landowner still does not have a land certificate, then he must first register the land with the local Land Office. The landowner who is also the holder of land rights that can be proven by the existence of a land certificate, then he controls the land juridically and has the right to control his land physically.

Sale and purchase of land means that the owner of the land as the seller transfers his rights (both physically and juridically) to another party who receives the transfer of rights, namely the buyer. For the transfer, a payment of a sum of money is made by the buyer to the

seller which is a mutually agreed price. From the payment, the seller will usually provide a receipt as proof that he has received the money. In order for a buyer to be guaranteed his rights and protected by law to own, control the land juridically and physically in real terms, then the sale and purchase must be registered with the Land Office. Based on the provisions in Government Regulation Number 24 of 1997 concerning Land Registration, a sale and purchase intended to transfer land rights can be registered if the sale and purchase can be proven by the existence of a PPAT Deed.

The transfer of land rights by sale and purchase must be carried out in good faith. If there is a dispute over land, it is necessary to see that the seller and buyer have good faith in the act of buying and selling land or not. Good faith is usually indicated by honesty whose implementation is based on a value determined based on propriety and civility in society, and refers to existing regulations.

Not infrequently found in buying and selling land, the buying and selling process stops after receiving money as evidenced by receipts. There are still many people who consider that with the provision of money by the buyer and the provision of receipts as proof of acceptance by the seller, the sale and purchase is considered complete even though it still needs to be registered in order to provide legal certainty of their rights and provide legal protection from parties who may interfere with ownership and control of their land.

Based on the above, the author will conduct a discussion that proceeds from the issue of the good faith of the buyer who controls the land based on the receipt in the case of Supreme Court Decision Number 801 K / PDT / 2022.

## **METHOD**

This research is in the form of normative law, namely research based on legal regulations (Soekanto, 2015). Data was collected by literature studies that traced the literature related to the problem. Secondary data such as books, journals, regulations and court rulings are the library materials used. This research method is to analyze and process data carried out qualitatively. This research is descriptive analytical with deductive logic inferences, which is carried out solely to describe and analyze problems regarding the good faith of buyers in land tenure based on land sale and purchase receipts in Supreme Court Decision Number 801 K / PDT / 2022. After the data is analyzed and described, the data will be arranged systematically in a description. The conclusion in this study is used deductive logic that concludes the discussion by pursuing it in a special statement.

## **RESULTS AND DISCUSSION**

### **A. Land Tenure**

Land tenure is when someone physically controls a piece of land and controls a piece of land juridically. The word mastery comes from the syllable power, which means "The ability or ability (to do something); authority over something or to determine (govern, represent, administer and so on) something; persons vested with authority" (Nurhaliza et al., 2023). While mastery means "The process, way, act of mastering or striving". (Nurhaliza et al., 2023)

Physical mastery means mastering the land is physically real. Juridical tenure is the possession of land with legal ownership. In order for land ownership to be legal according

to law, landowners are required to be able to prove it by having a land certificate in which his name is written as the right holder. Juridical tenure means that the subject controls the land with legally attached rights, so that he is protected by law and gives the owner the authority to be able to physically control the land. It can also happen, physical mastery that is carried out without juridical mastery. This happens when someone rents their land to someone else, or the person who controls the land has no rights without the permission of the landowner (control without a basis of rights / illegal).

The certificate is interpreted by Government Regulation Number 24 of 1997 as "Certificate is a certificate of proof of rights as referred to in Article 19 paragraph (2) letter c of the UUPA for land rights, management rights, waqf land, property rights over apartment units and dependent rights, each of which has been recorded in the relevant land book" (Nomor, 24 C.E.). The evidentiary power of this land certificate is a form of legal certainty and legal protection for land rights holders stated in several regulations. Article 19 paragraph (2) letter c of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, is said to be a form of guarantee of government legal certainty by registering land which includes "Granting a valid proof of right as a strong evidentiary tool" (Indonesia, 1960). Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, namely, "Certificate is a strong proof of right regarding physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the relevant letter of measurement and land rights book" (Aprini, 2007). Meanwhile, in the latest government regulation, namely Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Unit and Land Registration, it is not explained about land certificates in detail, but the entity that land certificates are still recognized as strong proof of ownership is mentioned in Article 11 paragraph (3), Article 24 paragraph (3), Article 39 paragraph (4), and Article 54 paragraph (4).

In order for the right holder to have a piece of land to have a certificate, it is necessary to register with the local Land Office. With the registration of land, parties who have an interest in the land can get accurate information. This registration works as: (Urip Santoso, 2015)

- a. Ensure the status of rights attached to land, such as property rights, business use rights, building use rights, and use rights;
- b. Ensure the object of rights whose physical data can be known with certainty; and
- c. Ensure the subject of rights who is the holder of the right to his land.

Good faith stipulated in Government Regulation Number 24 of 1997 concerning Land Registration in the general explanation, states that people who acquire land in good faith and control the physical land in real faith can be said to be controlled in good faith. However, this only concerns the new context of the issuance of the certificate and for five years from the issuance of the certificate, the person who claims to be the owner does not sue and sues the local court. Furthermore, it is stated that the party who owns the land, controls and uses the land as his obligations and authorities are given legal protection. But in good faith the party who acquires, controls and registers land under his name is also given legal protection.

It can also happen that in a situation to prove the right to the old land that wants to be registered in the land registration for the first time, the owner does not have complete

evidence such as the original Deed of PPAT containing the granting of rights to the owner or the determination of granting rights from the authorized official as in Article 23 of Government Regulation Number 24 of 1997 concerning Land Registration. Then the owner can prove his ownership of the land based on the fact that the true owner has been in physical possession of the land for twenty years or more consecutively provided that: (Putri, 2017)

- a. Publicly, in good faith, reinforced by the testimony of a trustworthy person that the owner/applicant for land registration is the person entitled to the land; and
- b. The tenure of the land is not disputed by the local village/family community or customary law communities or other parties.

## **B. Position of Receipt in Sale and Purchase of Land**

Land sale and purchase according to Urip Santoso is "A legal act in the form of handing over land rights forever by the landowner or holder of land rights as a seller to another party as a buyer, and simultaneously the buyer submits a sum of money as a price, the amount of which is in accordance with the agreement of both parties" (Santoso & SH, 2017). The sale and purchase of land regulated under Indonesian Land Law relies on the provisions of Customary Law which are cash, clear and real. In the understanding given by Urip Santoso regarding the sale and purchase of land, elements can be taken which are the understanding of the nature of cash itself.

The nature of light and real means that a sale and purchase of land must be carried out openly (known by everyone and not carried out secretly), which as a manifestation of the sale and purchase itself is stated in a Deed of PPAT, namely the Deed of Sale and Purchase carried out and made before the authorized Land Deed Making Officer (Harsono, 2007). That the sale and purchase of land should and should be made a Deed of Sale and Purchase. Based on Government Regulation Number 24 of 1997 concerning Land Registration, Article 37 states that "Transfer of land rights and property rights to apartment units through buying and selling, exchanging, grants, income in companies and other legal acts of transfer of rights, except the transfer of rights through auction can only be registered if proven by a deed made by the authorized PPAT according to applicable laws and regulations" (Hoffman, 2016). The properties of buying and selling land are in line with the following conditions:

- a. Material, the seller is the person authorized to sell the land, the object is not in dispute, the buyer is the subject authorized to receive the right to the land; and
- b. Formil. If the material conditions are not met, the formal conditions cannot be implemented. Formal requirements related to the preparation of the Deed of Sale and Purchase and its registration with the Land Office.

In a buying and selling activity, when the price is paid by the buyer to the seller, the seller will provide a receipt as a form of payment that has been received by him. The form of receipt is not and must not be made by and in the presence of the Land Deed Making Office, so it is classified as a letter under hand (Legista, 2022). Receipt is "Letter of receipt of money" (Yusuf, 2023). Subekti defines the word payment as "Execution or fulfillment of any agreement voluntarily, meaning not by force or execution" (Subekti et al., 2003). Payment is not only reflected by giving a certain amount of money, but also giving goods that are the object of buying and selling. Payment for goods by the buyer to the seller must be accompanied by the gift of goods by the seller to the buyer.

To see the position of receipts in buying and selling land, it is necessary to see their position as evidence in the Civil Procedure Code. Before the court, the judge will consider the receipt as free evidence whose judgment is based on the judge's own discretion (Lita & Yurikosari, 2019). Letters are used as the most civil evidence among other evidences in the Code of Civil Procedure. The deed of PPAT is evidence that a legal act has been committed in the sale and purchase of land. Called Deed PPAT is a deed made by the Land Deed Making Officer. A deed is a writing in the form of a letter that is deliberately made and signed as evidence of an event or legal act (Lita & Yurikosari, 2019). The deed is divided into two:

- 1) An authentic deed is "A deed which, in the form prescribed by law, is made by and in the presence of public officers authorized for it at the place where it was made" (Ilham, 2015). An authentic deed is perfect i.e. "There is no need for an addition of evidence to have binding evidentiary power in the sense that what is written in the deed must be believed by the judge to be true as long as it is not proved otherwise"; (Tunc & Tunc, 2022) and
- 2) The deed under the hand is "As writings under the hand are considered deeds signed under the hand, letters, registers, papers of household affairs and other writings made without the intercession of a public servant". (Heriani, 2014) This deed can be perfect if the contents and signatures contained therein are recognized by the parties concerned.

From this explanation, it can be concluded that, a receipt in buying and selling is only as proof of payment. The receipt is not proof that the sale has occurred, but evidence that one of the conditions in the sale and purchase has been implemented.

### **C. Buyer's Principle of Good Faith**

Good faith comes from two words, namely good faith and good. Intention is expressed as "Determination, firm will, conviction, trust" (Bahasa, 2016). While good faith means "Having a good will (intention)". (Bahasa, 2016) The philosophy of good faith is divided into two, namely:

#### **a. Objectively**

Good faith objectively relates to the actions of people who determine themselves to be indicated as parties in good faith or not. Matters of concern in good faith are when the legal relationship prevails, and its rights and obligations are exercised in that legal relationship. (Is, 2020) An action done by man must not harm his neighbor, so in every action must be done with conscience. Objectively, good faith is whether the actions taken are considered contrary to good faith according to social propriety. Good faith is defined as "The intention of one party to an agreement not to harm its promise partner nor to harm the public interest". (Sjahdeini, 1993)

#### **b. Subjectively**

The terminology of this requirement is honesty or clean. Subjectively good faith is how parties realize their actions are contrary to good faith. A buyer in good faith is a buyer who with full trust the seller is the owner of the goods traded. He does not know if the seller is not being honest and it turns out that the seller is not authorized.

Subjectively, good faith is considered when all the conditions that must be met for the entry into force of a legal relationship have been met at the time the legal relationship comes into force. The fulfillment of this legal relationship is in the form of good faith of

buyers who carry out their rights and obligations in buying and selling. According to Soerjono Soekanto, what is referred to as a right is authority based on law. Liability is the burden that the law gives to be carried out (Aziz, 2012). If it turns out that there are conditions that are not met, then the party in good faith is considered to have fulfilled these requirements (Prodjodikoro, 1989). The law provides an objective assessment of good faith based on common sense and fairness according to laws and regulations. Article 1338 of the Civil Code alludes to every agreement must be executed in good faith. According to Subekti, "Executing an agreement must not be contrary to propriety and justice" (Subekti et al., 2003). Good faith is reflected in land buying and selling activities with the fulfillment of the nature and conditions of land sale and purchase, so that the act of buying and selling land is legal. In the case of land, indications of a good faith buyer include:

- a. The process is carried out through the correct procedures and procedures, as well as valid documents according to statutory provisions, such as buying and selling land before the Land Deed Making Officer. So that there is evidence that can be shown that in fact the sale and purchase of land is actually carried out; and
- b. Examining very carefully about the land to be traded, such as ensuring that the seller is the legal holder of land rights and is authorized to buy and sell land or the object of buying and selling land is certainly not in dispute.

As the buyer has attempted to exercise good faith by fulfilling the terms, nature and conditions of sale and purchase of land under customary law and law, he must be given a legal protection. The good faith of the buyer in buying and selling land can be seen by the proof of sale and purchase of land in the form of a Sale and Purchase Deed that the buyer has made with the seller before the Land Deed Making Officer. For something that the buyer does not know until there is a legal defect in the sale and purchase of land because the seller is not honest, then it is a matter where the buyer can be considered as a party who has good faith.

A sale and purchase agreement that begins with a seller who does not provide information to the buyer that he is not the holder of land rights and there are other people above the object of sale and purchase and continues to carry out the sale and purchase based on the Deed of Sale and Purchase, shows that the seller is not in good faith (Alwi, 2021). Judges' rulings tend to test the formal eligibility of a land sale and a good faith assessment determines whether the sale and purchase of land is legal or not (Putro, 2018). Here are some examples of Supreme Court rulings relating to buyers' good faith:

- a. Supreme Court Decision Number 663 K / SIP / 1971, buying and selling carried out based on the provisions as stipulated in the Basic Agrarian Law is declared void when initiated and accompanied by something unnatural and dishonest. This is because the buyer already knows that the land of the object of sale and purchase has been sold to another party;
- b. Supreme Court Decision No. 242 K/Sip/1958, a land sale and purchase that is not carried out in accordance with laws and regulations but is carried out with assistance and determined by the Customary Head based on local Customary Law is sufficient to prove that the sale and purchase was carried out in good faith; (Panggabean, 2021)

- c. Supreme Court Decision Number 34 K / SIP / 1956, an owner has not controlled his land since 1932 and has been sold to other parties. The sale and purchase of this land is carried out by fulfilling the nature of the light but not knowing the real owner, it is difficult to know and cannot know who the real owner is considered to be in good faith. (Panggabean, 2021)

In good faith, the buyer is protected by law in the form of damages, costs and interest. Even in the event of a dispute over the sale and purchase of land, the buyer can be said to be the holder of the right to the new land that is already legal. SEMA Number 7 of 2012 and SEMA Number 4 of 2016 consider the buyer to be in good faith if the sale and purchase and process are carried out with the correct process, valid documents and carried out before the Land Deed Making Officer or Village Head for the sale and purchase of customary land. (Askar, 2022)

#### **D. Good Faith of Buyers Who Control Land Based on Receipts in Cases in Supreme Court Decision Number 801 K/PDT/2022**

In its ruling, Supreme Court Decision Number 801 K/PDT/2022 tried the case that occurred between Lilis Suriyani and Kambojawasih. In this case, the subject matter is that Lilis demanded the physical surrender of her land from Kambojawasih which was considered by Lilis as an inheritance from her late husband, Didit Dahri. Kambojawasih is the brother of Didit. It is also known that Kambojawasih holds two certificates of disputed objects, pays land tax since 2005, has a land surrender letter from Didit and holds both land certificates.

The basis of Kambojawasih controlling the object of dispute and its two certificates of land located in one stretch on Jalan Tjilik Riwut, Kilometer 3.5 (in front of the Sports Stadium November 29), Sampit, Kotawaringin Timut Regency, Central Kalimantan Province is that a land sale and purchase has been carried out between Didit and Kambojawasih in April 2005. The sale and purchase price is Rp. 65.000.000,- (sixty-five million Rupiah) which is paid in installments three times. Upon receipt of each payment, a receipt will be given. When the third payment is made, the first receipt and the second receipt are immediately withdrawn by Didit and replaced by a full receipt of Rp. 65,000,000 (sixty-five million Rupiah).

In October 2019, Kambojawasih came with her husband, Saprudin, to meet Lilis to ask for information and/or approval that the object of dispute had been sold by Didit to Kambojawasih with a signature on the letter he had made. Lilis asked Kambojawasih and Saprudin to come back when her son Eliyae came home. Not long ago, Kambojawasih found itself sued by Lilis and her son for Unlawful Acts.

Based on the law, an objective assessment of good faith is given with reference to common sense and fairness according to laws and regulations (Wiratraman & Putro, 2019). It can also be seen from the decisions of existing judges assessing good faith with the fulfillment of the conditions of the sale and purchase of land. (Wiratraman & Putro, 2019) To see Kambojawasih good faith as a buyer in buying and selling land, it is necessary to pay attention to whether the sale and purchase carried out between Kambojawasih and Didit has fulfilled the existing conditions:

##### **a. Cash, bright and real nature**

As the definition of cash and buying land can be interpreted through the understanding given by Urip Santoso regarding the sale and purchase of land, namely the transfer of rights from the seller to the buyer who also pays the price to the seller. In this case, in fact the payment has been given by Kambojawasih to Didit. According to those who are perpetrators of buying and selling, it is enough for the sale and purchase to be carried out with proof of receipts and land surrender letters.

The nature of light and real means that the sale and purchase of land must be carried out openly (known by everyone and not carried out secretly), which as a manifestation of the sale and purchase itself is stated in a Deed of PPAT, namely the Deed of Sale and Purchase made by and carried out before the authorized Land Deed Making Officer. It is this bright and real nature that the parties do not fulfill. There is no PPAT Deed stating and proving that the sale and purchase of land between them has occurred.

**b. Material and formal requirements**

Material terms include that the object is not in dispute, the buyer is the person entitled to the land, the seller is the person authorized to sell the land. It cannot be known that at the time of the sale and purchase of land in 2005 the land was not in dispute because it had not been checked beforehand. Furthermore, regarding whether the buyer is entitled to his land can be seen by the type of land rights attached. Kambojawasih is an Indonesian citizen, and the object of buying and selling land is property rights based on both certificates.

Regarding the seller is the person authorized to sell the land, it must be seen that Didit and Lilis are a married couple who during their marriage never made a marriage agreement, then Didit must get approval from Lilis. This is what Didit did not fulfill, because in the trial Lilis postulated that he never knew and never agreed to the sale and purchase of this land.

Kambojawasih who have paid the sale price and have controlled the land do not have a solid basis to prove ownership and base control over their land. As is known that receipts in buying and selling are only proof of payment, not proof of buying and selling. The receipt only functions but is proof that one of the conditions in the sale and purchase has been implemented. What proves that the sale and purchase has been carried out is the Deed of Sale and Purchase. In the absence of a Sale and Purchase Deed between Kambojawasih and Didit in the sale and purchase of this land, the sale and purchase cannot be registered with the Land Office for transfer of rights.

Kambojawasih in this case as the buyer feels disadvantaged because the ownership and control of the land can result in not being guaranteed and protected by law. In order for Kambojawasih to be granted legal guarantees and protection for the land for which it has paid, it must be a buyer in good faith. The good faith of the buyer is identified as honesty by the buyer because he is not aware of any defects or deception from the seller. Shortly after the handover of the two land certificates and the land surrender letter, Kambojawasih did hold both certificates of sale and purchase objects, but both of them had not been rebranded due to a refusal from the Land Office who told him to pay land tax first. Since the refusal, Kambojawasih has not sought what it considers to be its land rights. Looking at the concept, the buyer is considered not in good faith because it can be proven by Lilis.



Kambojawasih is well aware that Didit is married to Lilis, as he is also Didit's brother. Then he should find out in advance about the object of buying and selling and make sure Didit is an authorized seller. Due to the inaccuracy and inaccuracy of Kambojawasih who continue to carry out the trade, the buyer is considered not in good faith. As a result, the buyer is not protected by law which could cause the sale to be null and void. (3535) However, on the other hand, Kambojawasih may be considered to have good faith and control its land legally if the receipt is recognized by the parties concerned.

## **CONCLUSION**

Land tenure is when a person controls a plot of land physically and juridically. The person who juridically controls the land can be proven by himself as the holder of legal land rights, and with this is also followed by the authority to physically control the land as well. Proof that a person is a legal holder of land rights is by having a certificate in his name. In terms of land, it is not uncommon for land to be used as an object of buying and selling. To buy and sell land, it is necessary to pay attention to the nature and conditions of buying and selling land that must be met. Land buying and selling activities can protect buyers as new land owners by registering their sale and purchase. Registration of sale and purchase can only be done if a Deed of Sale and Purchase is made. In the case based on Supreme Court Decision Number 801 K / PDT / 2022, Kambojawasih as the buyer has paid the sale and purchase price along with the submission of the land certificate and land surrender letter from Didit as the seller. However, the sale and purchase was not carried out before the Land Deed Making Officer. For the act of buying and selling land carried out by Didit and Kambojawasih does not meet the nature of light and real, and material conditions are not met so that the formal conditions cannot be implemented. The main problem is that Didit did not include the approval of Lilis, who is his wife. For this reason, Kambojawasih is not careful and not careful in buying and selling land so that it cannot be categorized as a buyer in good faith. For land tenure carried out by Kambojawasih based only on receipts and certificates that have not been reversed, it is considered invalid because legal ownership can only be proven by land certificates.

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