



Relevance of Halal Values in Protection Consumers in Implementation Agreement Sell Buy Land in Indonesia

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Abstract. Land of life man have function important, therefore law on duty give protection law and certainty law for buyer land. Deep ground state dispute often give problem to buyer minimal land existing land status information. So infact practice sell buy soil often ignore protection existing consumers. So from that writing article iuni aim for discuss The Relevance of the Value of Justice In Protection Consumers On Selling Buy Land. As for writing this use method juridical sociological. Based on studies carried out found data in the form of protection to buyers who have do repayment in sell buy troubled land not yet fair Thing this because culture law from sellers who often don't honest related to land status, and the existence of party related third with accompanying seller demand rights on something land that also comes harmful party buyer. Existence effort through judiciary in its development quite old and expensive. Consequence Not guaranteed certainty law and protection law for buyer troubled land in the end will hurt principle destination law according to Islam and at the same time the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, p this already goods tntu will violate Justice social for whole Indonesian people.

Keywords: Sell Buy · Halal · Value · Legal Protection · Relevance

1 Introduction

In development seen clear that political law agrarian affairs in Indonesia have by clear arrange regarding rights on soil so that use soil in Thing interest socio-cultural, economic, and development national will by easy implemented in this country.

Ownership on soil is right people in Indonesia for get certainty law and legality on occupied land_ or owned in Thing this proved ownership with have certificate land issued by the National Land Agency (BPN). For get ownership soil can through inheritance, sell buy and grant and all transaction transition ownership soil the regulated by the government as regulated by law 1945 Constitution Article 33 Paragraph (3) states; Earth, water and wealth nature contained in it controlled by the state and used for big prosperity people¹ and their implementation set in Act Republic of Indonesia Number 5 of 1960

¹ 1945 Constitution Article 3 Paragraph (3).

concerning Basic Rules Agrarian² who regulates all procedures and techniques about land in the Republic of Indonesia.

Land is one of the source power natural for life human and is one Indonesia's wealth which has function social very urgent for Indonesian people use increase prosperity and wellbeing people. So that allotment need set and set with legislation. Importance role soil for life man make need will soil increase along with development and economy that requires land in the form of land inside life daily soil often become disputes, disputes and conflicts even until to hearing Court. This thing arise because soil have very important role urgent for life society, so public attempted get soil with justify all type method for get soil the although must take soil belongs to someone else with divert right owned by on soil that. Avoid disputes, disputes and conflicts, then be formed norm laws that must be obeyed by members society.

Society needs register soil To use get certificate right owned by on working land as tool proof strong on ownership right on land and forget guarantee certainty law However strength proof this no character absolute because still could disabled by tool proof others who can prove on the contrary. Sell buy soil is one diversion right on land and this no only covers sell buy just but diversion ownership this can because grant, exchange, gift wills and other acts that mean as transfer right owned by on soil that.

Deed Buy and sell is Deed authentic as tool proof strongest have role urgent in every connection law in life community that can determine by assertive rights and obligations so that ensure certainty law and at the same time could avoid happening dispute. If it happens dispute deed authentic as tool proof is proof strongest and have strength proof perfect in court. Article 1867 of the Civil Code which reads: "Proof" with writing done with authentic writing (deed) nor with the writings (deed) below hand". So deed is tool valid evidence _ in something agreement. "Deed" authentic is something letter made by or in front of employee powerful general will make it, make it happen enough evidence for second split parties and experts the heir as well as everyone who gets right from to him, that is about all thing, which is in letter that and also about the listed in letter that as announcement only, but that one then only just being told that live relate with tree in deed it.

About Deed authentic sell buy, sell buy also arranged in Article 1868 of the Civil Code in particular about Deed authentic sell buy reads: One Deed authentic sell buy is deed made in specified shape law by or in front of office authorized public for that in place deed made. Strength value evidence attached to the deed authentic sell buy specifically in engagement Sell Buy set in Article 1870 of the Civil Code jo Article 285 RBG is: perfect and binding, so that Deed authentic sell buy could stand up alone without need help or endorsement tool other evidence.

Deed authentic sell buy could just strength proof and limit minimum could changed Becomes proof the beginning of the writing is if against him submitted proof equal and decisive opponent. So what is necessary understood here is that proof Deed authentic sell buy the is tool perfect and binding proof However no character determine or force.

² Law No. 5 of 1960 – Regulations base Trees agrarian.

Subject sell buy land, there are 4 conditions about valid something agreement sell buy right on land, namely:

1. Condition binding agreement himself (edua party you're welcome agreed for stage something agreement sell absolute buy)
2. Condition say (the party who has fulfil condition mature according to legal, healthy mind and not is at under forgiveness)
3. Condition Thing certain (about wide land, location, certificate, rights attached)
4. Condition the cause of things (content and purpose in agreement that must clear and based on desire second split party)

Existence displacement right owned by on land, then new owner will get soil right hers and must register it with the Land Office local, previously made formerly the deed before the PPAT. Switch right on land and rights owned by on unit House through sell buy, exchange, grant, income in company and actions law transfer right other (except auction) only could registered if proved with deed made by the authorized PPAT. Something deed authentic sell buy could canceled by the District Court if there is proof that says that Deed authentic sell buy it turns out made contain disabled law through examination in court. Because of about how deed sell buy canceled because contain disabled the law must proven in court.

Happening problem in transition right on land that happened often harmful buyer intentional land good because rights his no fulfilled even though already doing all his obligations. So forget the rights intentional buyer good this must go through track long law, spend time and cost addition as example a number of case dispute sell buy ground below this:

1. Case number 48/Pdt.G/2018/PN Kds in Thing this buyer intentional land good must go through track execution at the Kudus District Court for get right because owner previously no want to deliver mastery land that has been for sale³.
2. Case number 4/Pdt.G/2019/PN Kds in Thing this owner soil previously sue intentional buyer good with plan deed oppose law that seems done at the time transaction sell buy soil the with hope court could cancel certificate land issued by the Land Agency national. However fact the judge prove that plaintiff only engineer story and inside Thing this Kudus District Court decided lawsuit no could accepted and punished plaintiff for pay cost trial⁴.
3. Case number 14/Pdt.G/2018/PN Kds in Thing this plaintiff aaddalah intentional buyer good already doing everything his obligations in the process of selling buy soil will but seller no want to deliver object land for sale buy it so that intentional buyer good must cast lawsuit to Holy District Court For could get right her. The Kudus District Court granted part claim and declare plaintiff is owner legitimate on land that⁵.

This post aim for discuss more carry on related problem protection law for buyer in Thing sell buy troubled land from perspective normative juridical.

³ http://sipp.pn-kudus.go.id/index.php/detil_perkara accessed on February 15, 2020.

⁴ http://sipp.pn-kudus.go.id/index.php/detil_perkara accessed on February 15, 2020.

⁵ http://sipp.pn-kudus.go.id/index.php/detil_perkara accessed on February 15, 2020.

2 Research Method

Method used is method juridical sociological where writing this no only researching text legislation just but also implementation law in the field.

3 Result and Discussion

3.1 Implementation Protection Consumer in Sell Buy Land Now This

Designation soil in language our could worn in various meaning. So in use need given limits, so you know in meaning what term the used. In law soil the term “land” is used in meaning juridical, as something understanding that has been given limitation authorized by UUPA. Article 4 of the UUPA states that:

On the basis of right dominate from the State as intended in Article 2 is determined existence Miscellaneous right on surface earth, which is called land, which can given to and owned by people, good alone nor together with other people and legal entities.

Based on the above description, then could understood that soil in definition juridical is surface earth. Mean surface Earth that is as part from land that can judged by any person or legal entity. Because of that, the rights that arise above right on surface Earth included in it building or the things that are on it is something problem law. Problem the law in question is related issues _ with embraced related principles with connection Among soil with plants and buildings on it.

Land given to and owned by people with the rights provided by the LoGA, are for used or utilized. Right on soil is the right that gives authority to those who have right for use or take benefit from the land he owns. Article 4 paragraph (1) of the Law Number 5 of 1960 concerning Basic Rules Agrarian Law (UUPA) means soil as surface earth, with thereby right on soil is right on surface earth. Next paragraph (2) confirms that although by ownership right on soil only on surface earth, use Besides on soil that alone, also above surface earth, water and space on it. What is meant right on land, is rights on soil as set Article 16 of the Law tree agrarian specifically right on primary⁶ soil.

In development sell buy soil not yet able give guarantee protection law for party buyer land. This thing because still a lot various case violation law on transactions sell buy lots of land harmful party buyer. Sudarman as party buyer from the Holy City explained that his side feel harmed in transaction sell buy which land certificate given land to her it turns out there is a number of expert heirs who law inheritance have right above one field soil who have paid by him. At the beginning herself no knowing that land that has been bought it turns out there is dispute scramble treasure inherit on it. Sudirman who bought from one expert inheritance knowing that field soil the no attached right inheritance more from one orah expert inheritance. Consequence existence sale soil by unilaterally by one expert inheritance to him, as a result Sudarman must face to face

⁶ Ali Ahmad Chomzah, *Land Law Series I Land Law Award State Land Rights Series Land Law II Certificates and Problems*, Prestasi Pustaka, Jakarta, 2002, page. 1.

with problem dispute land that must also be emit cost big, though soil dispute the has paid paid off.⁷

Then in the Demak area there is case dispute soil Among party buyer with the inhabitant soil that. At first Bambang sold plot land in Wedung 200 sqm, known that he bag Bambang's land inhabited by Jatmiko who was originally has allowed by Soeprudo as heir and parents from Bambang, Bambang in need amount of funds finance her son school also sells soil inheritance that. After the ground it was bought by Markum with the price is 250 million rupiah, the mediama Jatmiko soil belongs to Bambang who has for sale to Mark is also reluctant for move. This thing result in Mark is having a hard time for enable land that has been bought from Bambang. Various method family has taken Mark for ask Jatmiko move from land that has been bought from Bambang. However Thing that failed. Finally Markum also took road solution by civil court in court. Solution it's long and with cost high too.⁸

Then case next happened in Kedung Jati, Regency Grobogan. In 1998 Suryatno _ buy plot paddy field with price Rp. 50,000,000,-to Wanto Khoirun who is his adoptive father. After Wanto Khoirun die world in 2019, Suryatno give right to Binti as child the girl for take the land rights that have been bought to Wanto, because sell buy no accompanied with submission letter letter D at time transaction sell buy soil Among Suryatno and Wanto, finally Yuli as child from Wanto no willing deliver letter letter D land that has been bought by Suryatno to Wanto, neither does Yuli confess has existence payment money To use purchase land by Suryatno to his father. Binti who feels harmed take road law to court However rejected because agreement sell buy no accompanied existence receipts and contracts sell buy between party.⁹

So that clear seen that often parties seller nor interested party to something land for sale buy it often not have good etiquette. According to Subekti, the principle of *good faith* is one of the most important joints in contract law.¹⁰ Furthermore, Subekti argues that an agreement in good faith is to carry out an agreement by relying on the norms of propriety and decency.¹¹ The obligation to perform contracts in good faith is universally recognized in the principles of international contract law. The international recognition contained the preamble to the 1969 Vienna Convention where it was stated: "*The principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized*". Also in UNIDROIT (*The International Institute for the Unification of Private Law*) Article 1.7. Stated "*each party must act in accordance with good faith and fair dealing in international trade*" and "*the parties may not exclude or*

⁷ Sudirman, Interview personal with party buyer soil aggrieved heir consequence dispute soil inheritance in Kudus City on August 10, 2020.

⁸ Markum, interview with aggrieved party from existence sell buy soil consequence existence right live from party third above _ land for sale in Wedung District, Kabupaten Demak, on August 11, 2020.

⁹ Binti, interview with aggrieved party _ from existence sell buy soil consequence existence right live from party third above _ land for sale in Kedung area Jati, Regency Grobogan, on August 14, 2020.

¹⁰ Subekti, *Principles of Civil Law, PT*. Intermedia, Cet. XXVIII, Jakarta, 1996., p.4.

¹¹ *Ibid*, page. 5.

limit their duty".¹² Based on this, the principle of good faith is a universal principle that must be applied to every agreement.

In *Black's Law Dictionary* it is explained that good faith (*good faith*) is: "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."¹³

The definition of *good faith* in contracts is clearly explained in the National Civil Law Symposium organized by the National Legal Development Agency (BPHN) which determines that good faith should be defined as follows:¹⁴

- a. Honesty in making contracts;
- b. At the drafting stage, it is emphasized, if the contract is made before an official, the parties are considered to have good intentions (although there are also opinions expressing objections);
- c. As appropriate in the implementation stage, which is related to a good assessment of the behavior of the parties in carrying out what has been agreed in the contract, it is solely aimed at preventing inappropriate behavior in the implementation of the contract.

Based on the understanding of good faith in the contract/agreement, the main element is honesty. The honesty of the parties in this agreement includes honesty of self-identity and honesty of the will and goals of the parties. Honesty is the main element in making an agreement/contract because the dishonesty of one party in the agreement/contract can result in losses for the other party. First, as an illustration, there is one party who was dishonest at the beginning of the agreement, regarding his identity, of course, most likely will not carry out the contents of the agreement because the initial goal is solely to get achievements from the other party but on the contrary he acts to carry out his achievements. Second, the parties were not honest from the start about the purpose of the agreement/contract. As an illustration, person A owes a debt to person B, person A has not been able to pay off his debt according to the schedule to person B, then person A intends to pledge his assets to person B, but instead of the parties making a debt agreement with a guarantee agreement through fiduciary or mortgage rights, but the parties make a binding sale and purchase agreement with an option to buy back (*buyback*). The illustration shows that the parties are dishonest in the purpose of making the contract/agreement because the agreement made is not in accordance with the actual purpose. The agreement is legally void and with the cancellation of the agreement, it is certainly detrimental to the parties to the agreement.

¹² C indawati, *Principles of Good Faith (Itikad Good) in Contract Business International*, Pulpit of Law, Vol.26 No.2, June 2014, Gajah Mada University, Yogyakarta, 2014, page.191.

¹³ Henry Cambell Blacks, *Black's Law Dictionary*, 4th Edition, St. Paul, Minnesota, USA, West Publishing Co., 1984, page.713.

¹⁴ National Law Development Agency (BPHN), National Civil Law Symposium, Cooperation with National Legal Development Agency (BPHN), Faculty of Law, Gadjah Mada University, Yogyakarta, 21–23 December 1981. in Agus Yudha Hernoko, *Asas Proportionality In Contract Commercial*, Laksbang Mediatama, Yogyakarta, 2008, page. 141.

The definition of good faith in the National Civil Law Symposium is in line with the opinion of JM Van Dunne where in 3 phases of the agreement, namely: *pre contractuale*, *contractuale phase*, and *post contractuale phase*, the principle of good faith must be attached to each phase of the agreement.¹⁵ In relation to the phase of the agreement, each has different legal consequences if there is bad faith. The existence of bad faith in the *pre* -contractuale phase can result in prosecution of the party with bad faith, not only civilly but also criminally. This theory is used to explore and analyze as well as describe the implementation of good business ethics in the implementation of electronic contracts in the commodity futures investment business sector carried out by customers and futures brokerage companies in Indonesia.

Various case above clear result in no existence guarantee clear law related protection law for buyer soil During this. This thing result in not justice hukym. Humanizing justice human, or *blatant justice people*.¹⁶ Like known, legal empire is empire of reason one's mind, intention and taste child human, wherever he is is at undergo his life. This thing in line with principle in theory Justice dignified who cares in utilise the opportunity given Lord to him for help each other through activity think; humanize man or *vaping people*.¹⁷ Various case above _ clear has result in side justice and rights basic man for buyer land that has been prioritize etiquette good in sell buy land.

1. Relevance of Halal Values In Protection Consumers On Selling Buy Land

Destination law according to Islam basically set in principle *maqsid al-Sharia*, on the principle of *maqsid al-Sharia* explained that law must capable protect five things, as for five things the are:¹⁸

- a. Religion;
- b. Intellect;
- c. Soul;
- d. Treasure objects;
- e. Descendants.

Then realize justice, justice according to Islam in Thing this is liken something with other things good by Mark nor by size so that no heavy adjacent or siding between one with the others. Next fair also has mean siding to truth.¹⁹ Basically Allah SWT is called as "The Most Just and Wise" to His servant, meaning that all deed man no will influence justice of Allah SWT, good and bad deed man precisely will accept balance individually. This thing could seen in the Quran Chapter 41 Verse 46 which states that "whoever does" pious charity so the reward for himself and stuff who does deed evil, then the sin for herself alone/, and not once in a while your Lord persecutes His servants."²⁰ Temporary

¹⁵ JM Van Dunne in Agus Yudha Hernoko, *Covenant Law: Principles Proportionality In Contract Commercial*, Laksbang Mediatama, Yogyakarta, 2008, page.118.

¹⁶ Firm Prasetyo, 2015, *Justice Dignified, Perspective Legal Theory*, Nusamedia, Bandung page. 2.

¹⁷ *Ibid*, page. 22.

¹⁸ *Ibid*, page. 48.

¹⁹ *Ibid*, page. 51.

²⁰ Tohaputra Ahmad, *Al-Qur'an and its Translation*, CV. As Syifa, Semarang, 2000, page. 185.

that *Jumhur Ulama* agree state that whole The companions of the Prophet SAW are fair and not need discussed justice of the companions of the Prophet SAW who can seen in narration Hadith.²¹

Based on various type the explanation above glook clear that occur something linkages close Among destination law according to Islam, the goal law land, and goals law in context destination country as listed in the Fourth Paragraph Preamble of the 1945 Constitution of the Republic of Indonesia. Linkages that that is linkages in Thing semblance in existence mandate good on purpose law according to Islam, according to law land, and law national that religious and human values as well as justice need absorbed in political law national, in other words that political law national need based on Pancasila which is the crystallization from mandates that is born from culture and values public by dynamic. Not guaranteed certainty law and protection law for buyer troubled land in the end will hurt principle destination law according to Islam and at the same time the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, p this already goods tntu will violate Justice social for whole Indonesian people.

4 Conclusion

1. Protection to buyers who have do repayment in sell buy troubled land not yet fair Thing this because culture law from sellers who often don't honest related to land status, and the existence of party related third with accompanying seller demand rights on something land that also comes harmful party buyer. Existence effort through the judiciary in its development quite old and expensive.
2. Consequence Not guaranteed certainty law and protection law for buyer troubled land in the end will hurt principle destination law according to Islam and at the same time the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, p this already goods tntu will violate Justice social for whole Indonesian people.

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