

The Essence of Legal Protection for Good-Faith Land Buyers in South Sulawesi

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ABSTRACT

Land sale and purchase transactions frequently give rise to legal disputes in Indonesia, particularly when buyers acting in good faith later face claims arising from defects in land ownership or prior legal irregularities. This study examines the essence and effectiveness of legal protection for good-faith land buyers within the Indonesian legal system, with a specific focus on practices in South Sulawesi. Employing a normative-empirical legal research method, the study analyzes statutory regulations, court decisions, and empirical data obtained through questionnaires distributed to legal practitioners and stakeholders involved in land transactions. The findings indicate that, normatively, Indonesian law provides a strong foundation for protecting good-faith buyers through the Civil Code, the Basic Agrarian Law, and Supreme Court Circular Letters (SEMA No. 7 of 2012 and SEMA No. 4 of 2016). These instruments emphasize the principle of good faith, legal certainty, and the preference for registered rights. However, empirically, the implementation of such protection remains less effective. Inconsistent judicial decisions, inadequate due diligence practices, limited public legal awareness, and the absence of detailed implementing regulations for Article 1338 of the Civil Code significantly weaken legal certainty for buyers. The study further reveals that the emergence of digital and virtual land transactions presents new legal risks that are not yet comprehensively regulated. Therefore, this research recommends the formulation of more specific implementing regulations, strengthening the proactive role of Land Deed Officials (PPAT/Notaries), and continuous legal education programs conducted by land authorities. Such measures are essential to ensure that good-faith buyers are not unjustly disadvantaged and that land law functions to deliver justice, certainty, and legal protection in an increasingly complex transactional environment.

Keywords: good-faith buyer, land sale and purchase, legal protection, legal certainty, agrarian law.

INTRODUCTION

Land is a strategic ecosystem component essential to human survival and a primary factor in development. It is inseparable from human life because it provides both a physical place to live and a means of livelihood through cultivation and productive use.

Indonesian legal philosophy frames the human-land relationship within the concept of *kedwitunggalan*, which treats individuals and the community as an inseparable unity. Accordingly, individual land needs are understood within the broader social interest: land relations are not purely individualistic but collective in orientation, while still recognizing and respecting individual rights.

This constitutional orientation is anchored in Article 33(3) of the 1945 Constitution (UUD 1945), which mandates that the earth, water, and natural resources are controlled by the State and utilized for the greatest

prosperity of the people. Within the Basic Agrarian Law (UUPA), land rights are conceptualized as “rights of control,” which operate in both private and public dimensions and may be understood as physical and juridical control. Juridical control is legally protected authority over land, which may coincide with physical possession (e.g., an owner occupying the land) or may be separated from it (e.g., the land is leased to a tenant). Juridical control may also exist without physical possession, such as when a creditor (bank) holds a security right over land while the right-holder retains physical control. The public dimension concerns the State’s overarching control as reflected in Article 33(3) UUD 1945 and Article 2 UUPA.

From the perspective of private law, Article 1313 of the Indonesian Civil Code (KUHPperdata) defines a contract as an act by which one or more persons bind themselves to others, thereby creating an obligation (*perikatan*). Contract performance must follow good faith, as emphasized by Article 1338(3) KUHPperdata, which requires that all agreements be executed in good faith. In land transactions, good faith is crucial because it underpins legal certainty and fairness: buyers acting honestly and properly should receive reasonable protection under the law. In practice, good faith is commonly reflected in the buyer’s payment of the agreed price and the seller’s obligation to deliver the object of sale free from encumbrances and disputes.

The Civil Code also distinguishes good-faith possession (*bezit*) from bad-faith possession. Article 531 KUHPperdata states that possession is in good faith when the possessor acquires ownership without knowledge of defects, while Article 532 KUHPperdata classifies possession as bad faith when the possessor knows that the object is not theirs; moreover, a possessor who loses in court is deemed to have acted in bad faith from the time the case is filed. In addition, Article 24(2)(a) of Government Regulation No. 24/1997 on Land Registration (PP 24/1997) links good faith to physical possession by requiring that land control be conducted in good faith and openly by the entitled party, supported by credible testimony.

Empirically, the study highlights how land disputes can undermine both investment security and consumer protection. In Nusa Mappala, Gowa, PT Indonesia Mitra Bersama acquired approximately 10 hectares through a release-of-rights transaction (*pelepasan hak*) for a housing development. As land values rose due to expanding development, a third party claimed ownership of around 1,000 m² within the tract, despite administrative assurances from local authorities that the seller was the lawful owner and that the land was recorded under the seller’s name. The dispute escalated into intimidation at the construction site and later litigation at the Sungguminasa District Court. Although the company prevailed at trial, an appeal prolonged uncertainty and caused losses, including delayed delivery to fully paying buyers and additional transaction costs. This illustrates how weak dispute-prevention mechanisms can transform land development into high-risk projects, even when transactions follow formal procedures.

A further example concerns land that had undergone multiple transfers and was supported by a registered ownership certificate (SHM No. 386/Kelurahan Tello, dated 24 May 1991, area 7,541 m², with a situation map dated 8 January 1990). Despite the formal chain of title and transactions conducted through authorized officials, subsequent litigation resulted in the certificate being challenged through documentary claims and allegations of forgery, producing significant losses for later acquirers. These cases demonstrate a recurring problem: formal compliance does not always translate into stable protection when disputes arise and judicial assessments vary.

More broadly, land ownership disputes remain frequent and legally complex in Indonesia. Weaknesses in land administration and inconsistent judicial approaches can place good-faith buyers in a vulnerable position. Although buyers may have acted legally, openly, and honestly and paid the full purchase price they may still face uncertainty due to competing claims and the application of principles such as *nemo plus iuris*, which prioritize the validity of title and registration.

Prior scholarship suggests that legal protection for good-faith buyers often falls short in practice, including because certificates or statements may be issued without sufficient verification and because court practice may not consistently apply guidance on good-faith criteria. This gap between written norms, administrative implementation, and judicial outcomes generates legal uncertainty, undermines public trust, and threatens fairness for parties who have acted without fault.

Normatively, the legal system provides bases for protecting good-faith buyers. The Civil Code allows claims for compensation (including costs and interest) in relevant circumstances, while SEMA No. 7/2012 and SEMA No. 4/2016 provide judicial guidance that transactions conducted with lawful procedures and documents especially those executed before a Land Deed Official (PPAT) should support the recognition and protection of good-faith buyers. However, when courts apply these standards inconsistently, the protective function weakens.

Accordingly, the analysis underscores the urgency of strengthening legal protection for good-faith buyers through clearer and more consistent criteria, stronger verification standards in land administration, and harmonized judicial application of SEMA guidance. A more integrated policy approach combining administrative reform, evidentiary standards, and consistent adjudication would reduce systemic risk and enhance legal certainty within Indonesia’s land system.

THEORETICAL FRAMEWORK

The theoretical framework of this study is built upon the integration of agrarian law theory, legal certainty theory, the doctrine of good faith, and legal protection theory to examine the position of good-faith buyers in land ownership disputes in Indonesia. Indonesian agrarian law is fundamentally grounded in the doctrine of state control over land, as mandated by Article 33 paragraph (3) of the 1945 Constitution and elaborated in the Basic Agrarian Law (UUPA), which conceptualizes land not merely as a private asset but as a social resource regulated by the State for the greatest prosperity of the people. This doctrine legitimizes the State's authority to regulate, administer, and supervise land rights, including land registration and certification systems intended to create legal certainty. Legal certainty theory emphasizes that law must be clear, predictable, and consistently applied so that individuals who comply with formal and material legal requirements can reasonably rely on the protection of their rights. In land transactions, this certainty is expected to arise from official documentation, registration, and certification processes; however, persistent land disputes reveal a discrepancy between normative legal certainty and its practical realization. The doctrine of good faith, as recognized in the Indonesian Civil Code, particularly Articles 1338, 531, and 532, further underpins this framework by distinguishing between honest and dishonest acquisition and possession of land, where good faith is characterized by lawful conduct, absence of knowledge of defects, and compliance with procedural requirements. In addition, Government Regulation No. 24 of 1997 reinforces good faith through requirements of open and honest physical possession supported by credible evidence. Legal protection theory complements these concepts by asserting that the law must provide both preventive and repressive safeguards to protect individuals who act in good faith from disproportionate losses caused by systemic failures in administration or inconsistent judicial interpretation. Within this framework, Supreme Court Circular Letters (SEMA) No. 7 of 2012 and No. 4 of 2016 serve as interpretative instruments intended to harmonize judicial practice by recognizing lawful transactions conducted before authorized officials and by affirming the entitlement of good-faith buyers to legal protection. Accordingly, this theoretical framework enables a comprehensive analysis of how state control, legal certainty, good faith, and legal protection interact in practice and how weaknesses in their implementation contribute to legal uncertainty and vulnerability for good-faith buyers in Indonesia's land system.

RESULTS AND DISCUSSION

The Nature of Legal Protection for Good-Faith Buyers in Land Sale and Purchase Transactions

Philosophy of Legal Protection

The philosophy underlying the legal protection of good-faith land buyers is rooted in the principles of justice, legal certainty, and the protection of honest transactions. This protection aims to ensure that buyers who are unaware of any legal defects are not unfairly disadvantaged. It is grounded in the principle of good faith as stipulated in Article 1338 of the Indonesian Civil Code and the principle that registered rights take precedence, as provided in Article 26 of the Basic Agrarian Law (UUPA). Nevertheless, the application of these principles is complex and requires buyers to exercise due diligence in verifying the validity of documents and the land's ownership history, particularly when the land is not yet certified, through the involvement of Land Deed Officials (PPAT) or Notaries.

The philosophy of legal protection for good-faith land buyers is intended to create legal certainty, protect economically weaker parties, and ensure fairness in agrarian transactions by emphasizing trust and transparency. Under this philosophy, honest buyers who acquire land without knowledge of legal defects or disputes should be protected even if problems arise in the future, especially where the land has already been certified. In principle, registered rights are prioritized; however, buyers must still act prudently and in good faith by purchasing land at a reasonable market price, ensuring that it is not encumbered, and conducting thorough verification.

Legal Objectives for Good-Faith Buyers

- a. The legal objectives of protecting good-faith buyers include:
 1. Justice (*Gerechtigheit*): Ensuring fairness for honest buyers who are not at fault for hidden defects in the object of sale.
 2. Legal Certainty (*Rechtszekerheid*): Providing protection so that valid transactions cannot be easily annulled, thereby promoting order in agrarian and civil law.
 3. The Principle of Good Faith (Article 1338 of the Civil Code): Contracts must be performed in good faith, meaning that a good-faith buyer is one who is unaware of any defects or legal flaws in the transaction.

4. Priority of Registered Rights (Article 26 of the UUPA): Land that has been sold to a third party acting in good faith cannot be annulled, thereby strengthening the evidentiary value of land certificates, where applicable.

Criteria for a Good-Faith Buyer

A buyer may be classified as acting in good faith if the following criteria are met:

1. Purchasing land at a reasonable price in accordance with prevailing market values.
2. Conducting adequate due diligence on the land's ownership history and legal documentation.
3. Having no knowledge of any disputes or legal defects attached to the land at the time of purchase.
4. Where the land is uncertified, the transaction remains legally valid if it fulfills the requirements of Article 1320 of the Civil Code, namely consent, legal capacity, a specific object, and a lawful cause.

Legal Basis for the Protection of Good-Faith Buyers

The legal basis for protecting good-faith buyers includes:

Indonesian Civil Code (Articles 1320 and 1338): Governing the validity of contracts and the principle of good faith.

1. Basic Agrarian Law No. 5 of 1960 (Article 26): Providing that land acquired by a third party acting in good faith cannot be annulled.
2. Government Regulation No. 24 of 1997: Regulating land registration and protecting good-faith physical possession of land.
3. Supreme Court Circular Letter (SEMA) No. 4 of 2016: Providing guidelines for the application of legal protection for good-faith buyers, particularly in land disputes.
4. Professional Role of PPAT and Notaries: Playing a crucial role in ensuring transaction legality and preventing losses by refusing transactions where legal uncertainty exists.
5. SEMA No. 4 of 2016: Serving as guidance for judges in determining and protecting good-faith buyers.

In essence, legal protection for good-faith land buyers is also regulated under Supreme Court Circular Letter (SEMA) No. 7 of 2012. Point IX of this circular provides that:

“Protection must be afforded to buyers acting in good faith even if it is later discovered that the seller was not legally entitled to sell the land.”

“The original owner may only file a claim for compensation against the unauthorized seller.”

In principle, buyers acting in good faith must be protected by law. In practice, disputes frequently arise between land buyers and sellers. For example, a person may purchase a parcel of land that is later discovered to be subject to dispute, pledged as collateral, sold by an unauthorized party, or supported by incomplete documentation. In such circumstances, the good-faith buyer becomes the injured party, and the law must clearly position itself to protect the rights of such buyers.

The Essence of Legal Protection for Good-Faith Buyers

The essence of legal protection for good-faith buyers lies in safeguarding honest and diligent buyers from losses, even where the seller is later found to lack legal authority. This protection is achieved by recognizing the validity of the sale and purchase agreement and redirecting legal claims toward the unauthorized seller. It is based on the principles of honesty (Article 1338 of the Civil Code), prudence through verification of the object's legal status, and the doctrine that lawful transactions must be respected—particularly when conducted in accordance with formal procedures such as PPAT deeds, public auctions, or clear customary law mechanisms.

The objective of this protection is to provide legal certainty and justice, especially in land transactions that are inherently complex and often involve weaker parties, as reflected in SEMA No. 7 of 2012 and SEMA No. 4 of 2016. In summary, the philosophical foundation of legal protection for good-faith land buyers seeks to balance the legal certainty of the original owner with the need to protect genuinely honest and careful buyers, ensuring that land law functions fairly, stably, and for the greatest social benefit.

Ultimately, legal protection ensures that buyers who have acted honestly and prudently do not become victims of disputes between sellers and third parties, by recognizing their transactions as legally valid and enforceable.

Effectiveness of Legal Protection for Good-Faith Buyers in Land Sale and Purchase Transactions

Legal protection for good-faith buyers in land sale and purchase transactions constitutes a fundamental issue within Indonesia's land law system, particularly given the frequency of land disputes and the complexity of land

administration practices. Although Indonesian positive law formally recognizes the principle of good faith and provides normative protection for buyers who act honestly and diligently, empirical realities demonstrate that such protection is often ineffective or inconsistently applied. This section elaborates on the effectiveness of legal protection by integrating doctrinal analysis, empirical findings, and institutional practice.

From a normative perspective, the principle of good faith occupies a central position in Indonesian private law. Article 1338 paragraph (3) of the Civil Code mandates that all agreements must be performed in good faith, implying honesty, fairness, and reasonable conduct by the contracting parties. In the context of land transactions, good faith is reflected in the buyer's compliance with legal procedures, payment of a fair market price, and lack of knowledge regarding any legal defects, disputes, or encumbrances attached to the land. This principle is further reinforced by Article 531 of the Civil Code, which distinguishes possession in good faith from possession in bad faith, emphasizing the buyer's subjective ignorance of defects at the time of acquisition.

In addition to the Civil Code, agrarian legislation strengthens the position of good-faith buyers. Article 26 of the Basic Agrarian Law (UUPA) affirms that land rights transferred to a third party acting in good faith cannot be arbitrarily annulled, thereby prioritizing transactional stability and legal certainty. Government Regulation No. 24 of 1997 on Land Registration further supports this framework by recognizing good-faith physical possession and emphasizing the importance of registration as a means of achieving legal certainty. Moreover, Supreme Court Circular Letters (SEMA) No. 7 of 2012 and No. 4 of 2016 provide interpretative guidance for judges, explicitly stating that good-faith buyers must be protected even if it is later discovered that the seller was not legally entitled to transfer the land.

Despite this strong normative foundation, the effectiveness of legal protection in practice remains questionable. To assess this issue empirically, this study collected primary data through questionnaires distributed to respondents in South Sulawesi Province in 2025. The respondents consisted of legal practitioners, government officials, academics, and community members who had experience or knowledge related to land transactions and disputes. The empirical findings are summarized in Table 1 below.

Table 1 Level of Effectiveness of Legal Protection for Good-Faith Buyers in South Sulawesi Province**

No	Description	Frequency	Percentage (%)
1	Effective	12	24%
2	Less Effective	30	60%
3	Ineffective	8	16%
	Total	50	100%

Source: Processed Primary Data, 2025

The data presented in Table 1 clearly indicate that the majority of respondents perceive legal protection for good-faith buyers as inadequate. Only 24% of respondents consider the existing protection to be effective, while 60% view it as less effective and 16% assess it as ineffective. This distribution demonstrates a significant gap between the legal norms designed to protect good-faith buyers and their actual enforcement in practice.

Several structural and institutional factors contribute to this perceived ineffectiveness. First, there is a persistent inconsistency in judicial decisions. Although SEMA No. 7 of 2012 and No. 4 of 2016 explicitly instruct judges to protect good-faith buyers, empirical evidence shows that many court decisions fail to consistently apply these guidelines. In some cases, judges prioritize formal ownership claims or unverified documentary evidence over the buyer's good faith and compliance with legal procedures, resulting in decisions that disadvantage buyers who acted honestly and cautiously.

Second, weaknesses in land administration exacerbate legal uncertainty. The existence of uncertified land, incomplete land records, and overlapping claims creates fertile ground for disputes. Buyers who have conducted due diligence may still face legal challenges due to administrative errors, historical inaccuracies, or fraudulent claims by third parties. In such circumstances, the principle of *recht van registratie* (priority of registered rights) is often applied rigidly, without sufficient consideration of the buyer's good faith or reliance on official information.

Third, the role of Land Deed Officials (PPATs) and Notaries, although crucial, is not always exercised optimally. Ideally, PPATs and Notaries function as gatekeepers who ensure the legality and validity of land transactions by verifying documents, ownership status, and the absence of encumbrances or disputes. However, in practice, some transactions proceed despite incomplete verification, either due to negligence, pressure from parties, or systemic inefficiencies. This weakens preventive legal protection and shifts the burden of risk onto buyers.

From an empirical standpoint, respondents also highlighted that land transactions involving unregistered or customary land pose the greatest risk for good-faith buyers. Although such transactions may be valid under customary law or private law principles if they satisfy the requirements of Article 1320 of the Civil Code, they do

not provide sufficient protection for registration purposes. As a result, buyers may hold contractual rights but lack enforceable proprietary rights, leaving them vulnerable in the event of disputes.

The findings further reveal that legal remedies available to good-faith buyers, such as claims for compensation under Articles 1491, 1471, and 1496 of the Civil Code, are often inadequate to fully address the losses suffered. Litigation processes are lengthy, costly, and uncertain, and compensation awards rarely reflect the full economic and non-economic losses incurred by buyers, including opportunity costs and emotional distress.

Taken together, these findings confirm that legal protection for good-faith buyers in South Sulawesi—and by extension in Indonesia more broadly—remains less effective in practice, despite strong normative recognition. The disconnect between law in books and law in action undermines legal certainty, weakens public trust in land administration, and discourages investment in land-based development.

To enhance the effectiveness of legal protection, this study proposes several strategic measures. First, judicial harmonization is essential to ensure consistent application of SEMA guidelines and good-faith principles across courts. Second, land administration reforms must prioritize data accuracy, transparency, and comprehensive registration to reduce the incidence of overlapping claims. Third, PPATs and Notaries should adopt a more proactive and precautionary approach, including the refusal of transactions where legal ambiguities persist. Fourth, clearer statutory standards for assessing good faith should be developed to guide judges, practitioners, and buyers alike.

In conclusion, while Indonesian law provides a comprehensive normative framework for protecting good-faith buyers, empirical evidence demonstrates that such protection has not yet achieved its intended effectiveness. Strengthening institutional capacity, ensuring consistency in judicial practice, and reinforcing preventive mechanisms are critical steps toward safeguarding honest buyers and promoting justice, certainty, and stability in Indonesia's land law system.

CONCLUSION

The essence of the regional head's discretionary authority in the appointment of Senior Executive Positions (JPT) for civil servants constitutes an adaptive legal power aimed at ensuring the continuity of public services when the merit system and formal regulatory mechanisms encounter technical constraints or strategic leadership vacancies. The novelty of this study's findings demonstrates that, in the practice of the Palopo City Government, discretion is not treated as a political privilege but as a corrective–adaptive policy instrument that strengthens civil service governance by balancing executive flexibility with legal certainty grounded in the General Principles of Good Governance (AUPB) and multilayered oversight mechanisms involving both the State Civil Service Commission (KASN) and internal supervisory bodies (APIP). Accordingly, discretion is positioned as a legitimate governance instrument to enhance bureaucratic responsiveness to local needs without undermining the integrity of the merit system. To institutionalize this approach, the Palopo City Government should develop an evidence-based discretionary decision-making framework through systematic civil service talent mapping, transparent stages in senior executive placement, and comprehensive documentation of policy justifications that are subject to public and legal scrutiny. As a further contribution and novelty, this study recommends the formulation of technocratic guidelines for discretionary personnel management at the local level, ensuring that every discretionary decision is grounded in objective rationality, aligned with the broader agenda of bureaucratic reform, and capable of strengthening the accountability of regional heads within the framework of good governance.

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