



## Legal Protection For Buyers in Selling and Buying of Land Rights (Case Study of Selong State Court Number 55 / Pdt.G / 2018 / PN.Sel Concerning Unlawful Activities)

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### **Abstract**

This study aims to analyze the basis for judges considerations in adjudicating and deciding cases Number 55 / Pdt.G / 2018 / PN.Sel, analyzing legal protection for buyers in buying and selling land rights. The method used is the empirical normative legal research method, using a conceptual approach, statutory approach, and sociology of law approach. The results of this study, first, show the judge's consideration of illegal acts in cases of court decisions based on Article 1365 of the Civil Code. Based on these considerations, the Panel concluded that the documents of evidence submitted by Defendants I and II were not supported by the statements of witnesses, so that Defendants I and II were unable to prove their arguments. as well as the disputed land controlled by Defendant II is an Unlawful Act, however, on the other hand, the plaintiff is able to prove the arguments of the lawsuit through evidence supported by testimony of witnesses, then the plaintiff's claim is declared granted. Second, The form of legal protection that can be provided to buyers is repressive legal protection, this is needed to provide solutions and certainty as well as clarity on the settlement of existing disputes because basically the law protects the buyer because even though it is only made with a receipt and signed by the Village Head then the agreement has met the requirements stipulated in civil law so that the receipt can become a means of evidence, even though it has the power of proof to the extent that it is not yet perfect.

**Keywords:** *Legal Protection; Sale and Purchase; Land Rights*

### **Introduction**

An action is said to be an act against the law if the act has violated the rights of others or is contrary to its own legal obligations provided by the law. In other words, breaking the law is the same as breaking the law. Based on Article 1365 of the Civil Code, every act that violates the law and brings harm to other people, obliges the person who caused the loss due to his mistake to compensate for the loss. If an act does not fulfill the elements as determined in that article, then the act cannot be said to be an act against the law.

In Article 37 Government Regulation no. 24 of 1997 states that the transfer of land rights through sale and purchase can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the Prevailing Laws. One of the objectives of land registration is to provide legal certainty over the rights to the land that is owned. Legal certainty of land rights can be obtained by land rights holders by registering land.

In its implementation, it turns out that Government Regulation Number 24 of 1997 has not yet affected all levels of society, especially those who live in villages. Not many villagers understand the importance of certifying and registering their land. So that the law cannot guarantee whether he has the right to the land as well. One of the impacts of not having a certificate is the occurrence of problems one day. In addition, the necessity of buying and selling with a PPAT deed will also cause this problem because in rural areas where the Head of Sub-district or Village Head has not been appointed as temporary PPAT, while many rural communities sell. buying land without a PPAT certificate, and buying and selling it is done in front of the Village Head or Hamlet Head. So that legal protection to the buyer is needed in this case if a problem occurs at a later date.

As one of the cases that reflects this element in judicial practice relating to illegal acts in the sale and purchase of land is a case from the Selong District Court with decision Number 55 / Pdt.G / 2018 / PN.Sel, this case occurred in Bagik Pungguk Hamlet, North Pringgabaya District, East Lombok Regency. This conflict started with a resident named Juhan (buyer) who had bought a plot of land from Amaq Siti (seller), where the land was located in Bagik Pungguk Hamlet, Pringgabaya Utara Village, Peringgabaya District, East Lombok Regency. Mr. Juhan bought the land only with an agreement and with proof of receipt, besides that Amaq Siti also did not have a land certificate, this was because of the belief that the owner of the land was Amaq Siti. However, one day a father named Zakaria who lives in Belawong hamlet, Pringgabaya sub-district, East Lombok Regency, admitted that he was the one who owned the land, Mr. Zakaria told me that the owner of the land was his parent, Imran and had passed away, who during his life controlled a plot of land with a land area of  $\pm 23,357$  m<sup>2</sup>. During his lifetime, Mr. Imran had asked Amaq Siti for help to work on the land. Amaq Siti agreed and was willing to assist in working on the land belonging to Mr. Imran. After Mr. Imran died, Amaq Siti continued to work on the land, when the land would be taken by the son of Mr. Imran (Zakaria) Amaq Siti refused to give it for various reasons that are not clear. Here Zakaria (the plaintiff) sued Amaq Siti (the defendant I) and Juhan (Defendant II) on the grounds that the defendant had committed an illegal act because Defendant I kept the land belonging to the Plaintiff and even Defendant, I sold the land to Defendant II without the consent of the plaintiff as the right to the land. The judge decided, stating that the disputed land automatically transferred ownership rights to the plaintiffs, and stated according to the law that the act of Defendant I to transfer the disputed land to Juhan (Defendant II) without the permission of the plaintiff as the rightful party was an act against the law.

Based on this background, the authors are interested in writing research on "Legal Protection for Buyers in the Sale and Purchase of Land Rights (Case Study of Selong District Court Decision Number 55 / Pdt.G / 2018 / PN.Sel About Unlawful Acts)".

### **Formulation of the Problem**

Based on the background of the problem as stated in the description above, the focus of the problems to be discussed is as follows:

1. What was the basis for the judge's consideration in deciding the case of the Selong District Court Number 55 / Pdt.G / 2018 / PN.Sel regarding illegal acts?

2. How is the legal protection for third parties in the sale and purchase of land rights in the case of the Selong District Court Number 55 / Pdt.G / 2018 / PN.Sel)?

### **Research Methods**

The approach used in this study is a qualitative approach. A qualitative approach is a data analysis used for normative (juridical) aspects through a descriptive analysis method. To discuss the problems raised in this study, the researcher used an approach that was based on. Legislative Approach (The Statute Approach), Conceptual Approach (conceptual approach), Case Approach (Case Approach), Empirical Approach (empirical approach). The technique of collecting field data, especially the primary data, was done by using purposive sampling and snowball sampling.

In this technique and tools for tracing legal materials, it is carried out by interview and observation. Interview is by conducting questions and answers directly to the respondent about the problem under study. Meanwhile, the instrument used to conduct the interview was an interview guide that had been prepared. While the tool used for that is a cellphone to record it. Then observation by making direct observations of the subject and object of the study.

### **Analysis and Discussion**

#### **Consideration of the Judges in Examining, Judging, and Ruling on Illegal Acts**

R. Wirjono Prodjodikoro defines the word *onrechtmatigedaad* as an act against the law.<sup>1</sup> According to him, the words "action" in a series of words "acts of breaking the law" can be interpreted as positive but also negative, which includes things that people who are silent can be said to have violated the law because according to the law that person should have acted. Negative actions which are meant to be "active", namely a person who is silent, can only be said to have committed a legal act, if he realizes that he is silent is violating the law. So it is not the person's body that moves, but thoughts and feelings. So the moving element of the understanding of "action" now also exists. The word "violates" in the series of words "acts against the law" which is meant to be active, according to him the most appropriate word to translate *onrechtmatigedaad* is an act against the law because the term illegal act according to Wirjono Prodjodikoro refers to the law generally applicable in Indonesia. and most of it is customary law.

Article 1365 of the Civil Code explains that an act of violating the law is any act of violating the law which brings harm to another person, obliging the person who due to his wrongdoing to issue the loss, to compensate the loss. Likewise, in this case, the panel of judges considered that Defendant 1 (the seller) acquired the land without any legal rights, thus Defendant 2 (the buyer) who controlled the disputed land was against the law, so the act of Defendant 1 (seller) who transferred the land. a dispute with no legal rights to Defendant 2, who then controlled the disputed land by Defendant 2, where the actions of Defendants 1 and 2 were illegal.

The second element contained in an act of breaking the law is that there must be a loss. As stated in Article 1243 of the Civil Code which states that:

"Compensation of costs, losses, and interest due to non-fulfillment of an engagement will only begin to be required if the person in debt after being declared negligent in fulfilling the engagement".

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<sup>1</sup>Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum*, Mandar Maju, Bandung, 2010, Hlm. 1-2.

The element of loss in an illegal act must be proven. This is very important to determine the compensation that will be given as a result of this illegal act. Losses in this case can be in the form of material losses, such as the disputed land has been transferred by Defendant 1 without legal rights to Defendant 2, which is then controlled by Defendant 2, thereby resulting in losses. The losses suffered by the plaintiff here are material losses, namely the plaintiff loses his land which was sold without his knowledge and permission by Defendant 1.

The third element is the element of error, the element of error in an act against the law consists of:<sup>2</sup>

1. The element of error can be in the form of intention or negligence (intention and carelessness)
2. The element of error consists of two senses. First, the objective definition is a measure of behavior which is determined according to general standards. Subjective, namely with regard to the perpetrator himself, whether he has the skills to overcome the losses that may arise.

An action is deemed by law to contain elements of deliberation and negligence as above can be held accountable legally. Defendant 1's actions transferred the disputed land that did not belong to Defendant 2 to control the disputed land, so that here it is clear that the intentional and negligent elements of Defendant 2.

The causal relationship between an act and the loss that occurs is also a condition of an act against the law. In civil law, an act that must be considered as the cause of the resulting effect is an act that is balanced with the effect. The causal relationship arising from the mistakes or actions committed by Defendant 1 by transferring disputed land that did not belong to Defendant 2 to control the disputed land.

Based on the aforementioned considerations, the Panel concluded that the documents of evidence submitted by Defendants 1 and 2 were not supported by the testimonies of witnesses, so that Defendants 1 and 2 were unable to prove the arguments against the plaintiff's claim. Because the Defendant was unable to prove its rebuttal argument that the disputed land was land owned by Defendant 1 which was obtained from the inheritance of his parents named Debik which was sold to Defendant 2 then the disputed land controlled by Defendant 2 was an illegal act, but otherwise the plaintiff was able to prove the arguments for the lawsuit through a letter of evidence supported by the testimonies of witnesses, then the plaintiff's claim is declared granted.

Furthermore, based on the above legal considerations, the actions of the defendants who continue to control the land object of the dispute are proven to be against the law and rights, thus "Punish the Defendants or any object who has the right from them to surrender the land object of the dispute and what is attached thereon to the Plaintiffs. without any burden, namely the land located in Bagik Pungguk Hamlet, Pringgabaya Utara Village, Pringgabaya District, East Lombok Regency, NTB, covering an area of 23,357 m<sup>2</sup>.

Whereas because the Plaintiff's claim was partially granted, the Defendants must be burdened to pay the court fees.

### **Legal Protection for Buyers in Selling and Buying of Land Rights**

According to Article 1457 of the Civil Code, sale and purchase is an agreement whereby one party binds himself to hand over property rights to an item and the other party to pay the promised price.

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<sup>2</sup>Rosa Agustina, *Perbuatan Melawan Hukum*, Perpustakaan Nasional: Katalog Dalam Terbitan Program Pascasarjana Fakultas Hukum Universitas Indonesia, Jakarta, 2003, Hlm. 62.

The sale and purchase agreement has been in place since the agreement regarding the goods and price. Once both of them agree, there is a legal agreement.<sup>3</sup> Sas affirmed in Article 1458 of the Civil Code, which reads: buying and selling is deemed to have occurred between the two parties immediately after they reached an agreement on goods and prices, even though the goods had not been delivered nor had the price been paid.

The sale and purchase of land rights in general can be carried out with the deed of the Land Deed Making Official, this is in accordance with Government Regulation No. 24 of 1997 concerning Land Registration which states that the sale and purchase of land must be proven by the Deed of the Official for Making Land Deeds (PPAT), so that the sale and purchase of land must be carried out in the presence of the Official for Making Land Deeds (PPAT). This aims to provide legal certainty and legal protection for the holder of the land rights concerned.

Contract theory examines and analyzes the relationship or agreement made between one legal subject and another legal subject, where one legal subject is obliged to do something, while the other party is entitled to something.<sup>4</sup>

However, in people's lives it turns out that there are still those who trade only in front of the Village Head, based on the results of my interview with one of the respondents, Mr. Zuhan, that he admitted to buying and selling only in front of the Village Head because at that time there was no The Official for Making Land Deeds (PPAT) so that he and the seller make sale and purchase transactions only in front of the Village Head.<sup>5</sup>

From the results of an interview with Mr Juhan<sup>6</sup> The Village Head who witnessed the sale and purchase had passed away but at that time there was another witness, namely the Hamlet Head, based on the results of an interview with Mr. Yusuf (Hamlet Head) who explained that he had been the Hamlet Head since 1998 until now, it is true that Mr Yusuf witnessed Amaq Siti selling his land to Mr Juhan, according to his statement at that time he was at Amaq Siti's house, at that time Amaq Siti said he would go to the village head's office and finally Mr Yusuf went to the village office and entered in the Village Head's room. In the room there was the Village Head and Mr Juhan, from there he learned that Amaq Siti was going to sell his land to Mr Juhan. According to Mr. Yusuf's statement, he did not know about the origin of the land to be sold to Mr. Juhan, all he knew was that Amaq Siti had told him that Amaq Siti's parents got the land from the Village Head, Abdul Rahman (late) and other people. elder Amaq Siti got the land by clearing land.

The witness who knew about the sale and purchase of the land was Amaq Rohlim, because they both worked with Amaq Juhan. Amaq Rohlim did not witness the sale and purchase, based on an interview with Amaq Rohlim, that he said he did not witness the sale and purchase of the land, but he received stories from both parties, namely Amaq Siti and Mr. Juhan that the land had been sold to Mr. Juhan for Rp. 375,000.00 (three hundred and seventy-five rupiah), Amaq Rohlim was also never shown a land certificate and as long as he had never had anyone objected to the sale and purchase and until 2018 Mr Juhan controlled the land until finally someone took the land to court.<sup>7</sup>

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<sup>3</sup>Muhammad Djakfar, *Op.Cit*, Hlm. 216

<sup>4</sup>Salim Hs, *Op. Cit*, Hlm. 241

<sup>5</sup>Wawancara dengan Bapak Zuhan (pembeli), di Dusun Pohgading, Desa Pohgading kec.Pringgabaya Kabupaten Lombok Timur, Pada Tanggal 12 Juli 2020, Pukul 12.15 WITA.

<sup>6</sup>Wawancara dengan Bapak Zuhan di Dusun Pohgading, Desa Pohgading, Kecamatan Pringgabaya, Kabupaten Lombok Timur, Pada Tanggal 12 Juli 2020, Pukul 12.15 WITA.

<sup>7</sup>Wawancara dengan Amaq Rohlim, di Dusun Belawong Desa Pringgabaya kec.Pringgabaya Kabupaten Lombok Timur, Pada Tanggal 12 Juli 2020, Pukul 13.47 WITA.

From the results of the interview, the author can conclude that the sale and purchase agreement made between the seller and the buyer before entering the court is valid because it has met the elements as in Article 1320 of the Civil Code, namely:

1. To agree with those who bind themselves;

Agree on the parties who enter into an agreement in the form of a will to make an agreement, in other words there is an agreement from those who bind themselves. The agreement must be given freely even though the terms of this agreement have been felt or are considered to have been fulfilled, there may be an error where an agreement that has occurred is basically not an agreement, if both parties think they want the same thing but do not.<sup>8</sup>

2. The ability to make an engagement;

Competent according to Article 1330 of the Civil Code are those who are 21 years of age or not 21 years of age but have been married, not including people with mental illness or extravagance, because of which the transfer is decided to be under interdiction and a woman who is therefore transferred. decided to be under interdiction and a married woman.

3. A certain thing;

A certain thing means that at least, the type or type of object in the agreement has been determined, the meaning of the object here is what is required by the buyer and what is the right of the seller.

4. A cause that is lawful;

The purpose of a lawful cause is that what is in the content of the agreement is not against the law, morals and public order.<sup>9</sup>

The sale and purchase are a consensual agreement which means that it has been born as a legal agreement binding the parties when an agreement is reached between the seller and the buyer regarding the essential elements (*essensialia*), namely regarding the goods and the price.<sup>10</sup>

From the sale and purchase agreement will emerge the obligations of the parties which the seller and the buyer involved must fulfill. Where these obligations include:<sup>11</sup>

a. Obligations for sellers

1. Give up ownership rights to the goods being traded

The obligation to surrender property rights includes all actions which are legally necessary to transfer title to the goods being traded from the seller to the buyer.

2. Bear the enjoyment of the goods and cover the hidden defects.

This obligation is a consensus of guarantees given by the seller to the buyer that the goods sold are really his own, free from any burden or demands from any party.

b. Obligations for the buyer

<sup>8</sup>A. Qirom Syamsudin Meliala, *Pokok-Pokok Hukum Perjanjian Beserta Perkembangannya*, Liberty, Yogyakarta, 2010, Hlm. 9.

<sup>9</sup>*Ibid*, Hlm. 11

<sup>10</sup>I Ketut Oka Setiawan, *Hukum Perikatan*, Sinar Grafika, Jakarta, 2016, Hlm. 159.

<sup>11</sup>Muhammad Djakfar, *Op.Cit*, Hlm. 218

The main obligation of the buyer is to pay the purchase price at the time and place as placed according to the agreed agreement. In this case the price to be paid is an amount of money, even though this is not stated in the article of the Law, but is self contained in the meaning of sale and purchase.

The seller's obligations are also contained in Article 1493 of the Civil Code, which is to deliver goods sold and ensure legal security, while the obligations of the buyer are contained in Article 1513 of the Civil Code, namely to pay the purchase price at the time and place as referred to determined according to the agreement.

However, in this case, the seller and the buyer have agreed to buy and sell at a mutually agreed price of Rp. 375,000.00 (three hundred and seventy-five thousand rupiah), with the control of the land by Mr. Juhan, the handover has been made at that time. The land has been controlled by Mr. Juhan for ± 20 years and only then did someone object to Mr. Juhan's control of the land.

After the party (Mr. Zakaria) objected, Mr. Juhan gave an explanation of the land, he said the land had been bought by him from Amaq Siti from 1996 (one thousand nine hundred and ninety-six), then Mr Zakaria said that the land belonged to someone. his parents. Then Mr. Juhan looked for Amaq Siti to get an explanation about it, when he arrived at Amaq Siti's house still said that the land was really his. Mr. Zakaria came to my house again (Mr. Juhan) he asked to hold a deliberation at my house (Mr. Juhan) between me (Mr. Juhan), Amaq Siti and Mr. Zakaria then I agreed and said yes to Mr. Zakaria's invitation. After conducting the deliberation but not finding a middle ground, then we did it again at the Village Head's Office which was attended by Village officials, I (Mr. Juhan), Amaq Siti, Mr. Zakaria and his family. But during the deliberation Mr. Zakaria and his family asked that the land that I (Mr. Juhan) controlled to be handed over to him, it was clear at that time I refused because I bought the land from Amaq Siti, not from Mr. Zakaria, it's been a long time ago and it's only been 2018 Mr. Zakaria and his family recognized the land. I (Mr. Juhan) defend this land because I am the buyer, who bought the land from the seller (Amaq Siti) with and in front of the Village Head at that time, not to mention that I continued to pay the land tax from 1996 to 2018 at the time Of course, I object to being asked to voluntarily hand over my land to Mr. Zakaria. Not only once did Mr. Zakaria ask me (Mr. Juhan) and Amaq Siti to conduct consensus deliberations at the Village Office, but many times but still Mr. Zakaria asked me to hand over the land to him. So, we didn't reach a consensus and we found a way dead end. Then a few months after the deliberation, a letter came from the Selong District Court stating that the land that I (Mr. Juhan) controlled was being sued by Mr. Zakaria's family. After all the trial processes have run and reached a decision, namely that the land must be handed over to Mr. Zakaria who has proven that he is the owner, I still object because I emphasize again that I am only a buyer who only believes in my friend who sold the land and I bought it. However, after the execution I asked Amaq Siti to explain how the land was going because I only had a house and it was from the garden that I survived to live. Amaq Siti still doesn't want to be responsible for this, on the grounds that the land belongs to him, here I invite Amaq Siti to discuss it carefully about the losses I have received, you can imagine that my house, my land and my income are no longer there since the land this was handed over to Mr. Zakaria. After making several visits and discussing this matter several times to Amaq Siti's house, but the result was no consensus, he argued that he also did not accept the Court's decision stating that the land belonged to Mr. Imran then I suggested that we just appeal to The High Court, however, refused on the grounds that they did not have any more money for the cost of this case. I also offered to split the court fee in half to get the matter resolved, but he continued to refuse. Then a few months later I went to Amaq Siti's house with the intention of asking about the fate of my house, and finally he wanted to make peace on the condition that he was only able to build me a house in my village. Even though that was not enough, he should have put it out because I bought the whole land and I got income from the land too. But I agree. But until now the house has not been built until now.<sup>12</sup>

<sup>12</sup>Wawancara dengan Bapak Zuhan, di Dusun Pohgading, Desa Pohgading Kec.Pringgabaya Kabupaten Lombok Timur, Pada Tanggal 12 Juli 2020, Pukul 12.15 WITA.

Based on the results of the interview, the writer argues that the second party seller's obligation, in this case Amaq Siti, is that it should guarantee legal security in the form of an obligation that arises as a consequence that the goods sold by the buyer really belong to the seller himself and are free from the demands of others. As stated in Article 1495 of the Civil Code, that is, whatever the reason, if there is a penalty for handing over the goods that have been bought to someone else, then the buyer has the right to claim back from the seller:

- 1) Refund the purchase price;
- 2) The return of the results, if obligated he delivers the results to the true owner who demands the delivery;
- 3) Costs incurred in connection with the claim by the buyer to be borne, as well as costs incurred by the original plaintiff;
- 4) Compensation for damages along with court costs regarding the purchase and delivery of it has been paid by the buyer.

In this case, the attitude taken by the buyer (Mr Juhan) is as Article 1495 of the Civil Code says, so Mr Juhan has the right to demand a refund of the purchase price of the land and the costs he has incurred in connection with the claim of the land by the plaintiff, Mr Zakaria.

According to Abdulkadir Muhammad, the theory of responsibility in violating the law (tort liability) is divided into several theories, namely:<sup>13</sup>

1. Liability for the act of violating the law which was carried out on purpose (international tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant did would result in a loss.
2. Responsibility due to illegal acts committed due to negligence (negligence tort liability), is based on the concept of error (concept of fault) relating to morals and laws that have been mixed (intermingled).
3. Absolute responsibility for violating the law without questioning fault (strict liability), is based on his actions either intentionally or unintentionally, meaning that even though it is not his fault, he is still responsible for the losses arising from his actions.

Based on Article 1365 of the Civil Code, the seller should be held accountable for paying the losses suffered by the buyer, but in reality, in this case the seller has not fully carried out the responsibility.

If the loss suffered as a result of an unlawful act is regarding the assets of a person who has been injured, then as precisely as possible the compensation for damages must be in the form of restoring something, which the offender of the law changes in its original state.<sup>14</sup>

The consequence of an illegal act is the loss for the victim. This loss must be compensated by people who are charged by law to compensate for the loss. Acts against the law, regulates losses and compensation in relation to acts against the law with 2 approaches as follows:<sup>15</sup>

<sup>13</sup>Abdulkadir Muhammad, *Hukum Perdata Indonesia*, Citra Aditya Bakti, Jakarta, 1990, Hlm. 173.

<sup>14</sup>R Wirjono Prodjodikoro, *Op.Cit*, Hlm. 37

<sup>15</sup>Rachmat Setiawan, *Tinjauan Elementer Perbuatan melawan Hukum*, Alumni, Bandung, 1982, Hlm. 15.



### 1. General compensation

What is meant by general compensation in this case is compensation that applies to all cases, both for cases of contract default, as well as cases relating to other engagements, including due to unlawful acts. This provision has been regulated in Articles 1243 to with Article 1252 of the Civil Code. In the case of compensation, the terms used are:

- a. Cost is any money or anything that can be valued in terms of money that has been actually spent by the aggrieved party.
- b. Loss or loss is the reduction or decline in the value of assets as a result of an event of an illegal act.
- c. Interest is an advantage that should be obtained, but cannot be obtained because of an act against the law

### 2. Special compensation

In relation to compensation that is issued from an illegal act, apart from the general form of damages, the Civil Code also states that compensation is given for the following matters:

- a. Compensation for all acts against the law (Article 1365 of the Civil Code).
- b. Compensation for actions committed by other people (Article 1366 and Article 1367 of the Civil Code).
- c. Compensation for animal owners (Article 1368 of the Civil Code).
- d. Compensation for collapsed building owners (Article 1369 Indonesian Civil Code).
- e. Compensation for the family left by the person killed (Article 1370 of the Civil Code).
- f. Compensation for people who have injured or disabled limbs (Article 1371 of the Civil Code).

Dispute resolution can be through litigation and non-litigation, the dispute resolution process carried out through the court or what is often referred to as "litigation", which is a dispute resolution carried out by proceeding in court where the authority to regulate and decide is carried out by a judge. Litigation is a dispute resolution process in court, where all parties to a dispute face each other to defend their rights in court. The final result of a dispute resolution through litigation is a decision which states that one party wins and one party will lose.

Meanwhile, non-litigation dispute settlement or out-of-court dispute resolution can be seen in Article 6 paragraph (1) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which reads:

"Disputes or civil differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by overriding litigation settlement in the District Court".

According to Article 1 number 10 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it states that alternative dispute resolution is a dispute resolution institution or difference of opinion through a procedure agreed by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment.

The out-of-court settlement in this case has been pursued through:<sup>16</sup>

1. Consultation can be in the form of an action by one party against another party (a legal consultant / person who understands a rule) to provide his / her opinion on a problem faced by one of the parties. As in this case, the buyer has consulted a lawyer in his area regarding the problem it is facing and found several solutions.
2. Negotiation is a form of dispute resolution between the parties themselves, without the help of other parties by way of deliberation or negotiation, bargaining to reach an agreement with other parties

<sup>16</sup>Wawancara dengan bapak Zuhan di Dusun Pohgading, Desa Pohgading Kec. Pringgabaya Kabupaten Lombok Timur, Pada Tanggal 12 Juli 2020, Pukul 12.15 WITA.

through a good communication process with the aim of obtaining a solution or a way out of the problem being faced by both parties. In this case the buyer has also negotiated with the seller, namely the buyer offers to compensate for half the price of the losses it receives, but the buyer is not willing to replace it so that no solution is found.

3. Mediation is a negotiation involving a third party, dispute resolution of the parties by agreeing to appoint an impartial third party as an intermediary (neutral) to support or facilitate the process of exchanging opinions, or communication between parties to run smoothly in a calm and peaceful atmosphere so that reach a consensus. Mediation can also be said to be a process to reconcile the disputing parties by means of the disputing parties submitting the settlement to a mediator with the intention of obtaining a fair and acceptable result by the disputing parties. The buyer and the seller select the Village Head as the third person who is impartial and the Village Office as the venue for mediation. After conducting mediation, finally reaching an agreement, namely the seller will build the house on the buyer's land which is in the buyer's village, namely Bagik Pungguk Village.
4. Conciliation, namely the continuation of the mediation process, if the disputing parties are unable to reach an agreement and it is the third party who proposes a solution to the dispute, and the agreement occurs is final which binds the parties. In this case, the parties have not taken this step, because the buyer still gives the seller the opportunity to carry out the results of the agreement in the Mediation.
5. Expert judgment is a method of dispute resolution by the parties by asking for an opinion or an expert's assessment of the dispute that can be accepted and understood by the parties. In procedural law, it is called an expert witness, which is a testimony based on the expertise of a person or more to find a solution to the subject of the dispute.

Based on the results of the interview, the writer argues that the parties have gone through several dispute resolution processes through non-litigation or out-of-court solutions, which include consultation, negotiation and mediation and reaching a mutual agreement, namely that the seller will build a house on the buyer's land located at Bagik Pungguk Hamlet. Based on the buyer's statement, he admitted that he had not taken the road of conciliation, expert judgment and litigation dispute settlement or through a court institution, this was because the buyer was still waiting for the seller's good intentions to carry out the results of the mediation, moreover that the seller was a close relative. from the seller. In addition, the reason for the buyer is that they do not have more money to pay for the process in court again if the case is brought to the litigation (Court).

With the various problems that arise in the sale and purchase of land which is carried out only with a sense of trust and by using only receipts which of course brings harm to the parties themselves, therefore it is necessary to have legal protection for the parties to be able to provide legal certainty and maintain fulfillment of interests. the rights and obligations of each party. Legal protection of the parties in the event of a problem such as the case above depends very much on the strength of the sale and purchase agreement. In this case the sale and purchase agreement is only carried out in the presence of the Village Head and witnesses and stated in the receipt only.

The main basis for legal protection of a legal subject is Pancasila as the source of all sources of law as well as its philosophical basis and the 1945 Constitution of the Republic of Indonesia as its constitutional basis. Hence, the consequence is that the State is obliged to regulate and protect human rights.

Legal protection is legal action provided by law enforcement officials, both preventive and repressive in nature to each individual so that they can enjoy their rights provided by law so that they feel

safe. Legal protection itself is a term given by the government to describe protection provided by the government to individual humans in meeting their needs so that they are protected from things that can harm them. In other words, legal protection is a description of the function of the law where the function of the law itself can provide justice, order, certainty and benefit.

With regard to legal protection carried out by the government or the authorities, Philipus M. Hadjon distinguishes between two types, namely:<sup>17</sup>

1. Preventive legal protection is legal protection where the people are given the opportunity to submit objections (*insprak*) or their opinions before a government decision takes a definitive form. Thus, preventive legal protection means a lot for government action based on freedom of action because with this legal protection, the government is encouraged to be careful in making decisions.
2. Repressive legal protection, namely legal protection measures carried out by the State administrative court. Repressive legal protection aims to resolve disputes.

So that preventive legal protection can be provided by the government before the occurrence of a violation stated in a statutory regulation with the aim of providing limits in carrying out legal actions. In this case, which includes preventive protection as stated in Article 1491 of the Civil Code, namely The guarantee which is the obligation of the seller to the buyer is to guarantee two things, namely first the control of the object being sold safely and securely, secondly to the existence of hidden defects in the item, or in such a way as to issue a reason for cancellation of the purchase.

Repressive legal protection, namely legal protection carried out by applying sanctions to perpetrators in order to restore the law to its true state. It can also be said that protection is given when there has been a violation of the law. This protection is usually carried out in the court in the form of law enforcement which includes the provision of sanctions in the form of fines, compensation, and the methods taken in resolving disputes in court. This is aimed at providing justice in the trial process in the event of a dispute over land rights.

The legal protection that can be carried out by the buyer in the implementation of the sale and purchase of land depends on the strength of the sale and purchase agreement made, if the sale and purchase agreement is made before the Official for Making Land Deeds, the power of protection is in accordance with the protection of the authentic deed. In addition, this sale and purchase deed is a strong evidence to serve as evidence of the transfer of land rights as stated in Article 37 of Government Regulation Number 24 of 1997, transfer of land rights can only be registered if it is proven by a deed made by PPAT. Whereas the sale and purchase of land rights carried out only based on receipts has also stated that there has indeed been a legal act between the two parties, namely between the seller and the buyer, and although it is only under hand, it is also a means of proof regulated in the Book. The Civil Law Law, especially in article 1866, where the evidence consists of written evidence (written), evidence with witnesses, allegations, confessions and oaths, this is further strengthened in article 1874 of the Law Book. Civil law which states that one of the written evidences also includes an underhand letter that has been signed or has been affixed with a thumbprint by the parties concerned in the agreement. Sale and purchase carried out underhand can be used as evidence, but it is not a strong evidence to serve as evidence of the transfer of rights over the land concerned. Then the proof of payment cannot be registered at the land office. Thus, the law protects the buyer in the event of a dispute arising over the sale and purchase of the land.

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<sup>17</sup>Arba, *Hukum Tata Ruang dan Tata Guna Tanah*, Sinar Grafika, Jakarta, 2017, Hlm. 175-176.

Legal protection can be provided to buyers as stated in the Supreme Court Circular Letter (SEMA) No. 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for Courts in point IX it is formulated that:

1. Protection must be given to a buyer in good faith even if it is discovered that the seller is an illegitimate person (object of sale and purchase of land).
2. The original owner can only file a claim for compensation against the seller who is not entitled. Buyers who will get legal protection, of course there are criteria that must be owned based on the Supreme Court Circular No. 4 of 2016 concerning the Enforcement of the Formulation of the Plenary Meeting Results of the Supreme Court Chamber of 2016 as Guidelines for the Implementation of Duties for Courts, there are two criteria for buyers with good faith:
  - 1). Buying and selling land objects using procedures / procedures with valid documents as stipulated in the statutory regulations, namely:
    - Purchase of land through public auction or:
    - Purchase of land in the presence of a Land Deed Officer in accordance with the provisions of Government Regulation Number 24 of 1997 or:
    - Purchases of customary / unregistered land that are carried out according to the provisions of customary law, namely made in cash and in person (in front of / known to the local Village Head)
    - Preceded by research on the status of the object of sale and purchase land and based on this research shows that the object of sale and purchase land belongs to the seller.
    - Purchases are made at a reasonable price.
  - 2). Exercise caution by examining matters relating to the promised land object, including:
    - The seller is a person who has the right / right to land which is the object of sale and purchase, according to proof of ownership, or
    - The land / object being traded is not in the status of being confiscated or
    - Land / objects that are traded are not under guarantee / mortgage status
    - For land that is certified, information has been obtained from BPN and a history of legal relationship between the land and the certificate holder.

So based on the SEMA, it can be concluded that a buyer with good intentions can be defined as a buyer who does not know a defect in the land object and does not know that the seller is a person who is not entitled to the land object.

Good faith in Roman treaty law refers to three forms of behavior of the parties to the contract, including:<sup>18</sup>

- a. The parties must keep their word or promise.
- b. The parties must not take advantage of misleading actions against either party.
- c. The parties comply with their obligations and behave as respectable and honest people, even though these obligations are not expressly agreed upon.

According to Subekti, the existence of good faith in every relationship with the community gives an important meaning for public order, good faith as an inner attitude not to injure the rights of others is a guarantee for more orderly public relations.<sup>19</sup>

<sup>18</sup>Ali Imron, *Perubahan Keadaan dan Fungsi Iktikad Baik Dalam Pelaksanaan Perjanjian*, Bayumedia Publishing, Malang, 2010, Hlm. 104.

Meanwhile, according to Faisal in his journal entitled *The Legal Protection For A Good Faith Buyer Under A Court Decision*, it is stated that a person is said to have good faith, when his position when obtaining property rights is in accordance with applicable laws and regulations and he is not aware of any legal flaws in acquire the ownership rights.<sup>20</sup>

To know the definition of good faith in its implementation, the parties must do three things, namely:<sup>21</sup>

1. Each party must do something according to what was promised
2. Neither party is allowed to take advantage by deception
3. Each party must comply with its obligations such as respect and honesty even though it is not stated explicitly in the agreement.

In the Civil Code, Article 1338 also confirms that all agreements made legally are valid as Laws for those who make them. An agreement cannot be withdrawn other than by agreeing both parties, or for reasons that are stipulated by the Law. The law is declared sufficient for that. And an agreement must be made in good faith. The buyer in this case only meets a number of criteria which can be said to be a buyer in good faith based on the Supreme Court Circular No. 4 of 2016, including:

The sale and purchase of land objects that have not been registered are carried out according to the provisions of customary law, namely in cash and in light (in front of / known to the local Village Head) and the purchase is made at a reasonable price

a. As far as the buyer of the land is not in the status of confiscation or is not in the status of guarantee / insurance

Hence, based on this, the buyer can be said to be in good faith because he has met several of the criteria mentioned above. So, the buyer should be able to ask for a legal protection and what the buyer should do is to make an attempt to prosecute the seller as stated in Article 1496 of the Book of Law. Civil Law Law. Based on the author's interview with the buyer, the buyer said that at that time the seller still convinced him that the land belonged to him and the buyer was asked to trust the seller's legal advisor so he only said yes and the buyer told me that he did not understand legal issues like this so he entrusted the legal advisor.

Cancellation of the purchase has been imposed in the previous judge's decision No. 55 / Pdt.G / 2018.PN.Sel, where the buyer in this case is a third party who buys the land from the seller (the second party) then the original owner demands to return the disputed land to him. In this decision the judge decided to party third party and the seller to hand over the disputed land to the original owner because the seller has been proven to have committed an illegal act and the cancellation of the sale and purchase between the seller and the buyer (third party). Therefore, the buyer should have legal protection as stated. in Articles 1495 and 1496 of the Civil Code as mentioned above, the land sold to the buyer is not his own land but land owned by another person whose management is handed over to the seller. When viewed from the point of view of the seller's actions claiming that the land is his own land which is then sold to the buyer and has been proven to have violated the law, thus the manufacture or implementation of the agreement is found to be in bad faith by the seller, then the party with good faith, namely the buyer must get legal protection by taking legal remedies, namely by prosecuting the seller who has committed an unlawful act.

<sup>19</sup>Subekti, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, 2003, Hlm. 137

<sup>20</sup>Muhammad Faisal, "*The Legal Protection For A Good Faith Buyer Under A Court Decision*", Dalam Jurnal *Mimbar Hukum*, Volume 27, Nomor 2, Universitas Gajah Mada, Yogyakarta, 2015, Hlm 363-374.

<sup>21</sup>*Ibid*

A legal protection should be obtained by all legal subjects without any difference. As stated in one of the articles in the 1945 Constitution, namely Article 27 paragraph (1) which states: everyone has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law.

A protection can be interpreted as providing protection to human rights that have been harmed by other parties, and the purpose of legal protection is to give people a sense of comfort and security to enjoy all their rights granted by law.

According to Satjipto Raharjo, the law protecting a person's interest allocates a power to him to act in his interests. This allocation of power is carried out in a measured manner, in the sense that its breadth and depth are determined. Such power is what is called a right. But not every power in society is usually referred to as a right, but only certain powers which become the reason for the attachment of that right to a person.<sup>22</sup>

When analyzed with the theory of legal protection put forward by Satjipto Raharjo, even though the sale and purchase is carried out under the hands, it cannot be a cause or problem for the buyer, especially in the ownership of land rights obtained from the sale and purchase. This law is related to problems that occur in the field, so the law protects the buyer if at any time a dispute arises over the sale and purchase, because even though it is only made using a receipt and witnessed and signed directly by the Village Head, the agreement has met the requirements. The terms of the agreement regulated in civil law, where an agreement will be binding and become a law for the parties who have made the agreement, so that the agreement can become a means of evidence, even though it has the power of proof to the extent it is not yet complete rna.

## **Conclusion**

1. Judges' considerations in deciding a case are very important. It is hoped that the Judge's decision contains a sense of justice, benefit and legal certainty for the disputing parties. Based on the aforementioned considerations, the Panel concluded that the documents of evidence submitted by Defendants I and II were not supported by the statements of witnesses, so that Defendants I and II were unable to prove the arguments against the plaintiff's claim. Because the Defendant was unable to prove its rebuttal argument that the disputed land was land owned by Defendant I which was obtained from the inheritance of his parents named Debik which was sold to Defendant II then the disputed land controlled by Defendant II was an illegal act, but on the contrary, the plaintiff was able to prove the arguments for the lawsuit through a letter of evidence supported by the testimonies of witnesses, then the plaintiff's claim is declared granted.
2. The form of legal protection that can be provided to buyers is legal protection that is expressive in nature, this is needed to provide solutions and certainty as well as clarity on the resolution of existing disputes because basically the law protects the buyer because even though it is only made with a receipt and signed by The village head then the agreement has met the requirements stipulated in civil law so that the receipt can become a means of evidence, even though it has the power of proof to the extent that it is not yet perfect.

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<sup>22</sup>Satjipto Rahardjo, *Ilmu Hukum*, PT Citra Additya Bakti, Bandung, 2012, Hlm. 55

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