

## Legal Protection for Buyers in Good Faith in *Private-Deed* Land Sales: The Dialectic of Certainty and Justice

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### Article Info

#### Article History:

Received : 10-01-2026

Revised : 01-02-2026

Accepted : 09-02-2026

Published : 12-02-2026

#### Keywords:

Legal Protection,

Good Faith,

Transfer of Land Rights,

Land Registration,

Legal Certainty and Justice

### Abstract

*This article examines legal protections for bona fide buyers in informal land transactions, referencing Cirebon District Court Decision Number 59/Pdt.G/2022/PN Cbn as a key legal basis. It focuses on the conflict between the formal land registration regime outlined in Article 19 of Law No. 5 of 1960 and Article 37 of Government Regulation No. 24 of 1997, which mandates a PPAT deed, and the reality of community-based informal transactions. The study employs a normative juridical approach, including legislative, case, and conceptual analyses, along with prescriptive-argumentative methods to interpret the judge's considerations. Findings indicate that the court evaluated the agreement's validity, the seller's authority, payment status, and the plaintiff's control over the property as grounds for ratifying the transaction. As a good-faith purchaser, the plaintiff deserves legal protection, making the decision a means to legitimize administrative processes judicially. This ruling promotes substantive justice and legal certainty by updating land registration data and highlights a regulatory gap: protection currently relies on litigation rather than preventive administrative measures. Strengthening administrative legalization procedures for private transactions and establishing normative criteria for good-faith buyers are crucial steps toward achieving just and certain land law in Indonesia.*

### Informasi Artikel

#### Histori Artikel:

Diterima : 10-01-2026

Direvisi : 01-02-2026

Disetujui : 09-02-2026

Diterbitkan : 12-02-2026

#### Kata Kunci:

Perlindungan Hukum,

Itikad Baik,

Peralihan Hak atas Tanah,

Pendaftaran Tanah,

Kepastian dan Keadilan Hukum

### Abstrak

Penelitian ini membahas perlindungan hukum bagi pembeli yang beritikad baik dalam jual beli tanah di bawah tangan, dengan mengacu pada Putusan Pengadilan Negeri Cirebon Nomor 59/Pdt.G/2022/PN Cbn sebagai basis fakta yuridis utama. Isu hukum yang dikaji berkaitan dengan ketegangan antara aturan peralihan hak atas tanah berdasarkan Pasal 19 Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria mengenai kewajiban pendaftaran tanah untuk memastikan kepastian hukum, dan Pasal 37 Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah yang mensyaratkan akta PPAT, serta kenyataan bahwa transaksi masyarakat sering dilakukan secara informal. Artikel ini memakai pendekatan yuridis normatif, menggabungkan studi perundang-undangan, kasus, dan konsep, dengan analisis preskriptif argumentatif terhadap pertimbangan hakim. Hasil penelitian menunjukkan bahwa pengadilan menilai kebenaran material berupa kesepakatan para pihak, kewenangan penjual, pembayaran harga, serta penguasaan objek oleh Penggugat sebagai dasar pengesahan jual beli. Penggugat diposisikan sebagai pembeli beritikad baik yang layak memperoleh perlindungan hukum, sehingga putusan berfungsi merekonstruksi legalitas administratif melalui legitimasi yudisial. Putusan tersebut menghadirkan keadilan substantif bagi pihak yang bertindak jujur sekaligus membuka jalan menuju kepastian hukum melalui perubahan data pendaftaran tanah.

Namun, temuan ini juga menunjukkan celah regulasi karena perlindungan masih bergantung pada mekanisme litigasi, bukan pada sistem administratif yang preventif. Oleh karena itu, diperlukan penguatan mekanisme legalisasi administratif transaksi bawah tangan serta perumusan kriteria normatif pembeli beritikad baik agar integrasi antara keadilan dan kepastian hukum dapat terwujud secara lebih sistemik dalam hukum pertanahan nasional.

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## INTRODUCTION

The practice of buying and selling land under the table remains a common social phenomenon, even though the national land law system requires a PPAT deed and registration as important conditions to ensure legal certainty. The tension between this social practice and state administrative regulations often leads to disputes over ownership status and the validity of rights transfers. In this context, the issue is no longer limited to the validity of civil agreements but has shifted to legal protection for parties acting in good faith.<sup>1</sup> This issue makes the court an important forum for assessing the difference between formal and material truth in land law.<sup>2</sup> Article 19 of the Basic Agrarian Law requires land registration throughout Indonesia. This provision is elaborated in Government Regulation No. 24 of 1997, which regulates the procedures for proving and recording transfers of rights. Thus, from the outset, Indonesia's land law system has emphasized formal legality through deeds issued by authorized officials and registration administration.<sup>3</sup>

In social practice, individuals often buy and sell land and buildings informally without utilizing a Deed of Sale from a Land Deed Official (PPAT), even though this is against Government Regulation No. 24 of 1997 concerning Land Registration. These transactions are usually based solely on agreements between parties, payment receipts, witnesses, and physical inspection of the property. While such agreements may be valid under civil law, they lack legal certainty in land law because they are not recorded in the official registration system. This creates a gap between private legal relationships and the formal state legal framework. This conflict is exemplified in the Cirebon District Court Decision Number 59/Pdt.G/2022/PN Cbn, which handled a dispute over 91 m<sup>2</sup> of land on Dr. Sutomo, Cirebon City, still registered under the original owner with Certificate of Ownership Number 1035. The plaintiff acquired the land through private sales from the initial owner to Endang Hakim and then from his heirs to the plaintiff. Since these transfers were not documented with a PPAT deed, they could not be recorded as changes in the land registry. As a result, the plaintiff filed a lawsuit seeking legal recognition of the transaction and the transfer of the certificate.

<sup>1</sup> Erich Erich, Maryano Maryano, and Yurisa Martanti, "Perlindungan Hukum Terhadap Itikad Baik Penerima Kuasa Yang Bertindak Di Luar Kuasa Yang Dibuat Secara Autentik," *Jurnal Hukum Indonesia* 2, no. 1 (2023), <https://doi.org/10.58344/jhi.v2i1.11>.

<sup>2</sup> Clarita Cahyandari, Kalila Nashwa Ludmilla, and Firsty Oxana Dayinta Talia, "Kepastian Hukum Pembeli Hak Atas Tanah Tanpa Akta Jual Beli Yang Dibuat Oleh Pejabat Pembuat Akta Tanah," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (2025), <https://doi.org/10.38035/jihhp.v5i3.3521>.

Normatively, Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration stipulates that transfer of rights due to sale and purchase can only be registered if supported by a PPAT deed. This provision reflects a focus on formal legal certainty in land administration. However, in this case, the court still examined the substantive aspects of the legal relationship between the parties, including the chain of transfer, the seller's authority, and the Plaintiff's control over the object. This shows that when administrative formalities are not fulfilled, the judicial forum functions as a corrective mechanism to assess the material truth of a transfer of rights. From a legal theory perspective, this situation reflects the tension between formal legal certainty and substantive justice. Legal certainty requires procedures to comply with the land registration system, while substantive justice assesses the need for protection for parties who have actually entered into a valid agreement without bad faith. This decision is interesting because the judge not only considered the formal deficiencies in the AJB but also assessed the entirety of the legal facts revealed in court.<sup>4</sup> Thus, the judiciary serves as a balancing mechanism that bridges the gap between written norms and the social reality of land transactions.

Based on these conditions, this study focuses on the issue of legal protection for bona fide buyers in private land sales, using the decision as the main factual basis. The study aims to examine the gap between the land regulatory framework, which emphasizes the formality of registration, and the legal facts recognized by the court. The analysis is also placed in the perspective of legal philosophy regarding the relationship between legal certainty, benefit, and justice in the settlement of land disputes. With this approach, the article seeks to demonstrate the role of court decisions as a bridge between the normative structure of the UUPA and the social reality of land transactions.<sup>5</sup>

The study of protection for buyers acting in good faith in land transactions departs from the theory of legal certainty, which is the foundation of the national agrarian system.<sup>6</sup> In the construction of legal positivism, the validity of legal actions is measured by their conformity with formally applicable norms.<sup>7</sup> This principle is reflected in Article 19 of Law No. 5 of 1960 concerning Basic Agrarian Principles, which mandates land registration to ensure legal certainty, as well as Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration, which requires a PPAT deed as evidence of transfer of rights. If this norm is applied rigidly, then private transactions in cases reviewed administratively do

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<sup>3</sup> Fitriana Trinengsi Taolin, Dian Aries Mujiburohman, and Koes Widarbo, "Kesadaran Hukum Masyarakat Dalam Pendaftaran Peralihan Hak Atas Tanah," *Tunas Agraria* 7, no. 1 (2024), <https://doi.org/10.31292/jta.v7i1.277>.

<sup>4</sup> Alyaziza Aisyah and Mella Ismelina Farma Rahayu, "Kekuatan Hukum Akta Pelepasan Hak Atas Tanah Sebagai Dasar Perolehan Hak Dari PPJB Dalam Praktik Pertanahan Di Indonesia," *Jurnal Sosial Humaniora Dan Pendidikan* 4, no. 2 (2025), <https://doi.org/10.55606/innovasi.v4i2.4203>.

<sup>5</sup> Ruth Swastiningrum and Sigit Irianto, "PERLINDUNGAN HUKUM BAGI PEMBELI AKIBAT WANPRESTASI PENJUAL DALAM JUAL BELI RUMAH KPR DI BAWAH TANGAN (STUDI KASUS PUTUSAN PN CIREBON NO 30/Pdt.G/2016/PN.Cbn)," *Notary Law Research* 3, no. 2 (2022), <https://doi.org/10.56444/nlr.v3i2.3407>.

<sup>6</sup> Elvina Magistasari, A.L. Sentot Sudarwanto, and Burhanudin Harahap, "Legal Defects Of Sale And Purchase Deeds: A Review Of The Responsibilities Of Officials Making Land Deeds In Indonesia," *International Journal of Educational Research & Social Sciences* 5, no. 6 (2024), <https://doi.org/10.51601/ijersc.v5i6.924>.

<sup>7</sup> Hans Kelsen, *Pure Theory of Law*, in *Pure Theory of Law* (2024), <https://doi.org/10.2307/jj.13167921>.

not meet the legality standards of the registration system.<sup>8</sup> The legal position of the parties in the decision was from the outset in tension between formal legality and the facts of the civil legal relationship that had occurred.

However, substantive justice theory rejects a purely procedural interpretation of law. Radbruch asserts that positive law cannot be upheld if it actually results in intolerable injustice.<sup>9</sup> In this case, the judge assessed the series of legal facts in the form of multiple transfers, the authority of the heirs to sell, payment of the price, and control of the object by the Plaintiff as material truths that could not be ignored. This approach demonstrates that the function of the judiciary goes beyond mere administrative verification to an assessment of the substance of legal relationships. Thus, the decision places substantive justice as the basis for correcting the limitations of the formal land registration mechanism.<sup>10</sup>

From the perspective of legal protection theory, Philipus M. Hadjon distinguishes between preventive and repressive protection.<sup>11</sup> The basic land registration system is a preventive mechanism that aims to prevent disputes through transparent recording. However, if the community does not access this mechanism, disputes shift to the repressive realm through the courts. In this case, the court acts as a repressive protection tool that remedies previous administrative protection deficiencies. Decisions that confirm the legal relationship of sale and purchase and allow for transfer of ownership indicate that legal protection is not limited to the land bureaucracy structure alone, but can be restored through judicial authority.<sup>12</sup> The concept of a buyer acting in good faith also has a strong theoretical and jurisprudential basis. In civil law, good faith relates to honesty, fairness, and reasonable ignorance of legal defects in the object of the transaction.<sup>13</sup> In judicial practice in Indonesia, buyers acting in good faith often receive protection even if there are administrative flaws in the previous transfer process, as long as there are no elements of unlawful acts on the part of the buyer. In the case analyzed, the judge placed the Plaintiff in that legal position, so that protection was obtained through the ratification of the sale and purchase and the legitimization of the transfer of ownership. Thus, the doctrine of good faith serves as a normative bridge between civil law and land administration law.

The novelty of this research lies in its integrative approach between jurisprudential analysis, legal certainty theory, substantive justice, and protection of bona fide buyers within a dialectical framework. This study shows how the judicial function acts as a corrective mechanism to the limitations of the land registration system, an aspect that has not been

<sup>8</sup> Hafni Cholida Nasution, “Perlindungan Hukum Terhadap Pembeli Dalam Jual Beli Hak Atas Tanah Di Bawah Tangan Menurut Undang-Undang Pokok Agraria Nomor 5 Tahun 1960,” *Mediation : Journal of Law*, ahead of print, 2025, <https://doi.org/10.51178/mjol.v3i3.2351>.

<sup>9</sup> Muklis Al'anam, “Teori Keadilan Perspektif Gustav Radbruch: Hubungan Moral Dan Hukum,” *Jurnal Humaniora : Jurnal Ilmu Sosial, Ekonomi Dan Hukum* 9, no. 1 (2025), <https://doi.org/10.30601/humaniora.v9i1.6393>.

<sup>10</sup> Anisyaniawati et al., “Konsep Hukum Dan Keadilan Dalam Pemikiran Gustav Radbruch,” *Praxis: Jurnal Filsafat Terapan* 3 (2025).

<sup>11</sup> Ghina Angga Luqyana, “Perlindungan Hukum Terhadap Pemegang Surat Keterangan Ganti Rugi Terkait Di Atasnya Telah Terbit Sertipikat Atas Nama Orang Lain,” *Jurnal Multidisiplin Indonesia* 2, no. 9 (2023), <https://doi.org/10.58344/jmi.v2i9.555>.

<sup>12</sup> Silvia Syarafina, “Perkembangan Lembaga Konsinyasi Di Indonesia Dalam Memberikan Perlindungan Dan Kepastian Hukum Bagi Pemegang Hak Atas Tanah Dalam Ganti Rugi,” *Indonesian Notary* 3 (2021).

<sup>13</sup> Septiana Zahira, “Akibat Hukum Atas Adanya Pihak Fiktif Di Dalam Akta Jual Beli (Studi Putusan Pengadilan Negeri Jakarta Utara Nomor 845/PID.SUS/2018/PN.JKT.UTR),” *Indonesian Notary* 3 (2021).

explored in depth in previous studies. Thus, this article expands the discourse from mere normative validity to the reconstruction of legality through judicial legitimacy.

Conceptually, this dispute highlights the conflict between the provisions of Article 37 of Government Regulation No. 24 of 1997, which emphasizes formal evidence in the form of a PPAT deed, and the principles of good faith and substantive justice that have developed in doctrine and jurisprudence. The active framework of thinking in this decision is not an administrative dichotomy of validity or invalidity, but rather a reconstruction of legality through the court as a bridge between social facts and the registration system. Thus, the theories of legal certainty, substantive justice, and legal protection work dialectically norms provide structure, facts provide context, and judges provide synthesis. Through this synthesis, disputes are not resolved by rejecting the reality of transactions, but by transforming them into legality recognized by the legal system.

This article will address at least three key issues: first, the legal status of private land sales in Indonesia's land law system, which requires a PPAT deed and land registration as the basis for legal certainty; second, how the court in the reviewed decision constructed legal protection for buyers acting in good faith when the transfer of rights did not meet the formal requirements of Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration; and third, how can the synchronization between the principles of administrative legal certainty and substantive justice be realized through court decisions, and what are the implications for regulatory reform and land rights transfer mechanisms in the future.

## **RESULTS AND DISCUSSION**

### **Construction and legal status of land and house ownership purchased privately, reviewed from the perspective of land laws and regulations applicable in Indonesia**

The case in Cirebon District Court Decision Number 59/Pdt.G/2022/PN Cbn centers on a dispute over the ratification of a land sale conducted privately and not yet recorded in the land registration system. The object of the dispute is a 91 m<sup>2</sup> plot of land that is still registered in the name of the original owner in the Certificate of Ownership, while physical control is in the hands of the Plaintiff. The series of transfers of rights took place in layers, starting from the first owner to Endang Hakim, then from the heirs to the Plaintiff, all without a PPAT deed. This fact shows a discrepancy between the legal data in the certificate and the reality of control and civil law relations in the field. In its consideration, the court ruled that the legal relationship of the sale and purchase was supported by evidence in the form of letters, witness statements, and the fact that the Plaintiff controlled the object.<sup>14</sup> The judge did not limit the examination to administrative aspects, but assessed the existence of an agreement, a clear object, and payment of the price as essential elements of the agreement. Thus, the case was positioned as a civil dispute concerning the legitimacy of a legal relationship, not merely a violation of land administration procedures. This approach is in line with the view that the court has the authority to assess the material truth of a contract.<sup>15</sup>

<sup>14</sup> Roy Efendi Terihoran and Kosman Samosir, "Pertimbangan Hakim Menetapkan Adanya Itikad Baik Untuk Menentukan Perbuatan Melawan Hukum," *Jurnal Profile Hukum* 2, no. 2 (2024).

<sup>15</sup> Novaldy Franklin Makapuas, "Pencarian Kebenaran Material Dalam Perkara Pidana Melalui Alat-Alat Bukti Yang Sah Menurut Hukum Acara Pidana Indonesia," *Lex Crimen* 8, no. 8 (2019).

Article 5 of the Basic Agrarian Law (UUPA) states that a valid land sale and purchase is one that is conducted in accordance with customary law as long as it does not conflict with the interests of the State. Government Regulation No. 24 of 1997 concerning Land Registration states that customary law regarding land sale and purchase must be cash and transparent. Cash means that the seller transfers the rights to the land and the buyer transfers the money at the same time, even if the money transferred is only a deposit or down payment, while transparent means that the sale and purchase is carried out in the presence of the customary leader, in this case the PPAT, who then issues a letter of proof of deposit..

The practice of buying and selling land and buildings that does not involve a PPAT is known as an under-the-table land sale.<sup>16</sup> The sale and purchase of land rights conducted privately, when referring to Article 1320 of the Civil Code, fulfills the material and formal requirements regarding the validity of an agreement. The requirements governing the validity of agreements made by the parties are declared legally valid, because the sale and purchase of land rights conducted privately is based on an agreement between the seller and the buyer, witnessed by the Village Head or a person appointed as a witness. The formal and material requirements for the validity of land sales and purchases are as follows:

- a. Material requirements: in terms of material requirements, the sale and purchase is valid because the person who has the right to sell the land is the owner, namely the seller. If the seller is married, the husband or wife must also sign as the seller. The buyer is the person who has the right to the land they are purchasing because, legally, the buyer of land is the person who is allowed to own land. Based on Article 9 in conjunction with Article 21 paragraph (1) of the Basic Agrarian Law, only Indonesian citizens (WNI) are permitted to own land in Indonesia.
- b. Formal requirements, the transfer of rights or sale and purchase must be acknowledged and carried out in the presence of a PPAT (Notary Public) and must be done after the material requirements have been fulfilled. The seller and buyer, along with two witnesses, must be present for the deed to be drawn up.

The practice of buying and selling land under the table is reviewed from the perspective of Indonesian legislation, which states that such legal actions do not fully meet the requirements for the valid transfer of land rights according to applicable regulations.<sup>17</sup> Based on Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration, the transfer of land rights can only be done through a deed made by and in the presence of a Land Deed Official (PPAT), so that sales and purchase agreements made privately only have civil evidentiary force between the parties, but do not provide legal certainty to third parties.

The transfer of land and building rights in the perspective of national land law is not only viewed as a civil law action, but also has a social dimension that must be taken into account. This is because land is not merely an economic asset, but also has a social function as emphasized in Article 6 of the Basic Agrarian Law, so that every act of transfer of land

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<sup>16</sup> Asta Tri Setiawan, Sri Kistiyah, and Rofiq Laksamana, "Problematika Keabsahan Jual Beli Tanah Di Bawah Tangan Tanah Di Kawasan Transmigrasi," *Tunas Agraria* 4, no. 1 (2021), <https://doi.org/10.31292/jta.v4i1.133>.

<sup>17</sup> Abdul Wahid, Elya Kusuma, and Sarip Sarip, "UPAYA HUKUM PENYELESAIAN SENGKETA JUAL BELI TANAH SECARA DI BAWAH TANGAN," *Mahkamah : Jurnal Kajian Hukum Islam* 5, no. 1 (2020), <https://doi.org/10.24235/mahkamah.v5i1.6005>.

rights must comply with the provisions of applicable laws and regulations, including the principle of prudence in ensuring that the rights of the community are not neglected.

The formulation of laws and regulations is a form of preventive legal protection because it aims to prevent disputes. The government has implemented preventive legal protection by issuing Law No. 5 of 1960 and Government Regulation No. 24 of 1997 in conjunction with Government Regulation No. 18 of 2021. The provisions of Article 3 of PP No. 24 of 1997 in conjunction with PP No. 18 of 2021 explain the purpose of land registration. In addition, the provisions of Article 40 of PP No. 24 of 1997 in conjunction with PP No. 18 of 2021 stipulate that PPATs are required to submit the deeds they have drawn up to the land office for registration. The role of the community as applicants for the registration of land rights transfers and PPATs is very important in providing legal certainty and protection to the holders of rights to a plot of land.<sup>18</sup>

Under Indonesian law, private sales are generally not allowed under current regulations, even if buyers claim they lack the funds to draft a deed. Nevertheless, private land sales remain lawful because such sales are permitted, but buyers must accept the risks of non-compliance with applicable laws. Private purchases of land or houses can be considered valid if they meet material requirements such as the competence of the parties, mutual agreement, and a clear object. However, these do not yet have strong evidentiary value and are not legally binding for land transfer purposes, which require proof through a Deed of Sale and Purchase (AJB) issued by a Land Deed Official (PPAT) and registration with the National Land Agency (BPN) to ensure legal certainty and obtain a certificate in accordance with UUPA and Regulation No. 24 of 1997. Without these, the transaction is susceptible to disputes and lacks full legal protection.<sup>19</sup>

From a comparative law perspective, this situation is similar to the protection of equitable owners in the common law tradition, where substantive ownership can be recognized even if legal title is not yet complete.<sup>20</sup> The court serves to balance formal title and beneficial interest based on the facts of the transaction. This analogy helps explain why the judge in the case at hand did not stop at the absence of a PPAT deed. Thus, the decision reflects the universal tendency that modern property law is not entirely rigid with regard to formalities when the substantive facts are clear.<sup>21</sup>

The implication of this case is the strengthening of the court's function as a corrective measure for the inconsistency between administrative norms and the social reality of land transactions. The decision not only resolves individual disputes, but also affirms that the legality of rights transfers can be reconstructed through judicial evidence. This broadens the

<sup>18</sup> Wildan Sany Prasetya, Meisha Poetri Perdana, and Muhammad Amin Effendy, "ANALISIS YURIDIS PRAKTIK JUAL BELI TANAH DI BAWAH TANGAN MENURUT HUKUM ADAT YANG DILAKUKAN DI HADAPAN KEPALA DESA (STUDI KASUS DI DESA CIHARALANG KECAMATAN CIJEUNGJING KABUPATEN CIAMIS)," *Jurnal Ilmiah Galuh Justisi* 11, no. 1 (2023), <https://doi.org/10.25157/justisi.v1i1.10056>.

<sup>19</sup> Aldhi Arrahman et al., "PENYELESAIAN SENGKETA PERALIHAN HAK ATAS TANAH MELALUI JUAL BELI DI BAWAH TANGAN," *Consensus : Jurnal Ilmu Hukum* 1, no. 4 (2023), <https://doi.org/10.46839/consensus.v1i4.22>.

<sup>20</sup> Daryna Dziuba and Christian Almeder, "New Construction Heuristic for Capacitated Lot Sizing Problems," *European Journal of Operational Research* 311, no. 3 (2023), <https://doi.org/10.1016/j.ejor.2023.06.002>.

<sup>21</sup> Noor Atikah, "Kedudukan Surat Keterangan Tanah Sebagai Bukti Kepemilikan Hak Atas Tanah Dalam Sistem Hukum Pertanahan Indonesia," *Notary Law Journal* 1, no. 3 (2022), <https://doi.org/10.32801/nolaj.v1i3.29>.

understanding that legal certainty in land matters is not solely generated by administrative documents, but also by the legitimacy that arises from the judicial process. This finding forms the basis for analysis in the next subsection regarding the struggle between formal certainty and substantive justice.<sup>22</sup>

### **The Dialectic of Legal Certainty and Substantive Justice in Land Rights Transfers**

The decision under review clearly shows the conflict between administrative legal certainty and substantive justice in land disputes. Legal certainty in the agrarian context is institutionalized through Article 19 of the Basic Agrarian Law (UUPA) on the obligation to register land and Article 37 of Government Regulation No. 24 of 1997 on Land Registration, which requires a PPAT deed as the basis for recording the transfer of rights. This normative structure reflects the character of legal formalism, namely the view that legal validity depends on compliance with predetermined procedures. Within this framework, the absence of a PPAT deed in the case in question theoretically places the transfer of rights outside the administrative legality system. However, the facts of the trial show that civil legal relations have actually taken place, giving rise to tension between formal legality and social reality.

However, in the case in question, the facts of the trial show that even though the formal requirements of the PPAT deed were not met, the material elements of transfer were present, namely the agreement of the parties, the authority of the seller, payment of the price, and control of the object by the Plaintiff. The judge ruled that this series of evidence was sufficient to prove the existence of a civil sale and purchase legal relationship. This approach marks a shift from an administrative document orientation towards verification of the substance of legal relationships. In the context of justice theory, this stance is in line with the view that the law should not uphold formalities at the expense of material truth. Thus, the court used its judicial authority to bridge the gap between social facts and the registration system.<sup>23</sup>

Regulatory wise, Government Regulation No. 24 of 1997 also allows for changes to land registration data to be based on court decisions that have permanent legal force. This means that even though the normal route for transferring rights is through a PPAT deed, the registration system still recognizes the legitimacy arising from a judge's decision as the basis for updating legal data. In this context, the decision does not replace the function of the PPAT, but acts as a corrective mechanism when administrative procedures are not fulfilled but the substance of the legal relationship is proven. The position of the decision becomes an instrument of legal reconstruction that is reintegrated into the registration system. This shows that the land law system actually contains a dimension of flexibility through judicial channels.<sup>24</sup>

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<sup>22</sup> Putri Maida Sari, "Penguatan Akses Masyarakat Terhadap Kepastian Hukum Tanah Melalui Digitalisasi Layanan Di Kantor ATR/BPN Kota Bandung," *Jurnal Pengabdian Masyarakat* 2, no. 2 (2025).

<sup>23</sup> Suartini Suartini, Maslihati Nur Hidayati, and Anna Maryam, "Pendekatan Restorative Justice Dalam Penyelesaian Sengketa Pertanahan Di Indonesia," *Binamulia Hukum* 12, no. 2 (2024), <https://doi.org/10.37893/jbh.v12i2.621>.

<sup>24</sup> Muhammad Yamin and Zaidar Zaidar, "PENDAFTARAN TANAH DALAM MEWUJUDKAN KEPASTIAN HUKUM ATAS KEPEMILIKAN TANAH DAN UPAYA MEMINIMALISIR KONFLIK PERTANAHAN," *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018), <https://doi.org/10.33059/jhsk.v13i2.911>; Suartini, Hidayati, and Maryam, "Pendekatan Restorative Justice Dalam Penyelesaian Sengketa Pertanahan Di Indonesia."

Private sales that are not formalized into a deed drawn up by and in the presence of a notary public remain valid sales, as long as they meet the material requirements for sales, as outlined in Article 1457 of the Civil Code, which states that sales must be conducted openly, in cash, and in real terms. Private sales also fulfill Article 1320 of the Civil Code, namely the requirements for a valid agreement. The transfer of land rights and their registration are regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) and Government Regulation Number 24 of 1997 concerning Land Registration. The procedure for transferring land ownership certificates generally involves several stages, namely:

- a. The Sale and Purchase Agreement is drawn up before an authorized Land Deed Official (PPAT). This deed of sale and purchase serves as legal proof of the transfer of land rights.
- b. Submission of Evidence: the seller submits the original certificate, proof of payment of Land and Building Tax (PBB), and other supporting documents to the buyer.
- c. Transfer of Rights Registration: the buyer submits a transfer of rights application to the local Land Office, attaching the deed of sale, evidence, and other required documents.
- d. Research by the National Land Agency (BPN), BPN officers conduct research on the completeness and validity of documents as well as conducting measurements and field checks.

Conceptually, the ruling demonstrates an integrative model between norms and facts in the resolution of agrarian disputes. The court functions as a space for synthesis when regulations on changes in rights require formalities that have not been fulfilled, but substantive legal relationships already exist. This approach is in line with progressive legal thinking that views law as an open system that is responsive to social realities (Rahardjo, 2009). The judge's reasoning did not stop at the question of whether the PPAT deed existed or not, but rather whether the legal relationship that had been established was worthy of recognition and protection. Through judicial ratification, the change in rights that was originally formally flawed was transformed into a change that could be legally registered in the land system.

In the context of legal analysis, the theories of legal certainty, substantive justice, and protection of bona fide purchasers are not merely conceptual frameworks; they also serve as instrumental tools to assess the considerations of the judge in the a quo decision. The provisions of Article 37 of Government Regulation No. 24 of 1997 were scrutinized through the lens of legal certainty to delineate the boundaries of administrative legality, while the factual aspects of the trial concerning payment, the authority of the seller, and control over the object were examined using the concept of substantive justice to evaluate the reasonableness of the protection conferred upon the Plaintiff. Consequently, when the judge ratified the sale and purchase and authorized the transfer of title, such act can be regarded as an application of the principle of repressive legal protection for buyers acting in good faith, rather than an exercise of discretionary authority. This analysis illustrates that the decision not only resolves the dispute but also corrects the disparity between the legal framework and the social reality of land transactions in a normative context. Here, the theory functions as an evaluative

instrument within judicial practice, ensuring that the legal reasoning formulated is prescriptive rather than merely descriptive.

## **Protection of Good Faith Buyers, Loopholes in Norms, and Reconstruction of the Legal System**

The *a quo* ruling indicates that the core issue isn't the legality of civil transactions but rather the lack of alignment between the contract system and land administration framework. In civil law, the criteria specified in Article 1320 of the Civil Code such as agreement, capacity, specific objects, and lawful causes have been met in the court-tested transactions. Yet, under land law, Article 37(1) of Government Regulation No. 24 of 1997 on Land Registration mandates a PPAT deed as proof for recording rights transfer. While this ensures formal certainty, it poses problems when applied without an administrative mechanism to update older private transactions. Consequently, courts have to assume a corrective role that should be managed within the land administration system.

The initial regulatory gap is the lack of clear rules regarding the official legalization of underground transactions that meet the required criteria. While Government Regulation No. 24 of 1997 addresses data changes through court decisions, it does not specify procedures outside litigation for cases like this. Ideally, additional regulations such as a ministerial regulation on land affairs should be introduced to permit rights transfer registration based on factual verification by land authorities. This would include proof of payment, physical possession, verification from heirs, and absence of disputes. Such a reform would lessen the load of civil litigation, which is often more administrative. Therefore, legal certainty does not always need to wait for judicial approval.

The second gap relates to the lack of clarity regarding the legal standards for buyers acting in good faith in positive land law. This concept has developed strongly in doctrine and jurisprudence, but has not been explicitly formulated in the Basic Agrarian Law or Government Regulation No. 24 of 1997. As a result, legal protection depends on the interpretation of judges, which may differ from case to case. There is a need for normative regulations regarding indicators of good faith, such as reasonable prices, land status checks, actual control, and the absence of indications of collusion. Codifying these criteria will strengthen the integration between civil law and land administration law.

From a judicial perspective, cases such as this are essentially administrative legitimacy cases packaged as ordinary civil lawsuits. The evidentiary process still follows general civil procedure law, even though the substance being examined is the legal reconstruction for the purposes of land registration. It is necessary to consider the design of special procedures or Supreme Court guidelines for cases of ratification of private land sales, with a focus on verifying material elements and non-disputed status.(Pangidoan, Franciska, & Hutomo, 2022) Simplifying these procedures will accelerate legal certainty without reducing the quality of evidence. Thus, the judiciary functions as a fast track for correction, rather than a lengthy adversarial forum for disputes.

The synthesis of this analysis shows that the decision has delivered substantive justice, but through a process that is not yet systemically efficient. The provisions of Article 37 of Government Regulation No. 24 of 1997 need to be maintained as a pillar of certainty, but must be supplemented with alternative administrative legalization mechanisms. The judicial

process also needs to be adjusted so that similar cases are not treated as pure ownership disputes, but rather as verification of the legality of the transfer of rights. If these regulatory and procedural reforms are implemented, the protection of bona fide purchasers will no longer depend on the “discretion of the judge alone,” but will become an integral part of the land law system. Thus, substantive justice and legal certainty can be achieved within a coherent institutional design.<sup>25</sup>

This case ruling clearly reflects a legal remedy arising from the land administration system's failure to record transfers of rights that have already occurred in practice. When preventive measures like PPAT deeds and land registration are not used, it is often not due to intentional law-breaking, but rather social practices and limited access that hinder the system's ability to provide certainty from the outset. In such cases, the court functions as a corrective force, evaluating the actual facts and granting judicial legitimacy to the parties' legal relationships, thereby restoring legal order. This highlights that the judiciary not only resolves disputes but also rectifies administrative failures to reintroduce social realities into the legal system. Consequently, this decision serves as a means to restore delayed legality, reinforcing that legal certainty in land matters is not solely reliant on registration procedures but can also be achieved through judicial intervention.

## CONCLUSION

The main issue in the case under review lies in the tension between the formal provisions governing the transfer of land rights and the reality of transactions taking place in society. The agrarian legal system, through Article 19 of the Basic Agrarian Law, requires land registration to ensure legal certainty, while Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration requires a PPAT deed as the basis for recording the transfer of rights. In this case, the series of sales and purchases were conducted privately without a PPAT deed, so administratively, the requirements for legal data changes had not been met. However, during the trial, it was proven that there was an agreement between the parties, the seller's authority, payment of the price, and the Plaintiff's control of the object, which indicated that the material elements of the transfer of rights had been fulfilled. The court's decision used these facts as the basis for validating the legal sale and purchase relationship and legitimizing the process of transferring the certificate. The judge did not dwell on the formal deficiencies but assessed the substance of the legal relationship and the Plaintiff's position as a buyer acting in good faith. This approach demonstrates the function of the judiciary as a corrective mechanism when the administrative system is unable to record the reality of a transaction. Normatively, the decision operates within the existing legal framework because changes to land registration data can indeed be based on court decisions that have permanent legal force. Thus, the legality that was originally weak administratively is reconstructed through judicial legitimacy.

Based on the analysis results, this individual-level decision provides substantive justice for parties who have acted reasonably and honestly. It also promotes legal certainty via the subsequent registration process. The public perceives that the law values more than mere

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<sup>25</sup> Esther Masri and Hirwansyah, “Kebijakan Penerbitan Sertifikat Elektronik Pada Sistem Pendaftaran Tanah Di Indonesia Untuk Mewujudkan Kepastian Hukum,” *KRTHA BHAYANGKARA* 17, no. 1 (2023), <https://doi.org/10.31599/krtha.v17i1.2109>.

formalities, it also safeguards good faith. Nonetheless, this certainty remains corrective achieved through litigation rather than a preventive administrative system. While the decision ensures justice and certainty in this case, reforms in regulatory and land registration governance are still needed to enable similar protections without relying solely on judicial intervention.

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