



## **Point of Intersection in The Application of The Provision of A Buyer in Good Faith Towards Minangkabau Traditional High Heritage Land**

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**Abstract:** *Normatively, Indonesian civil law emphasizes the principle of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code and is reinforced by Article 32 paragraph (2) of Government Regulation Number 24 of 1997 and SEMA Number 7 of 2012 and SEMA Number 4 of 2016. These regulations provide legal protection for buyers in good faith, including in the sale and purchase of customary land. However, in reality (das sein), especially in the case of high heritage land in Minangkabau, tensions arise. Traditionally, high heritage land cannot be bought and sold because it is the property of the clan and is passed down from generation to generation. However, the practice of buying and selling still occurs based on the agreement of some clan members, causing conflict when other clan members refuse and take the case to court. The problem of this research is how to apply legal protection for buyers in good faith of high heritage land when faced with the norm of prohibition of buying and selling according to Minangkabau customary law. The research uses a normative juridical method with an approach of statutory regulations, doctrine, and analysis of judicial practices in West Sumatra. The research findings indicate a point of intersection between the principles of protecting buyers in good faith and protecting high-priority ancestral land. Some judges argued that protecting buyers in good faith should be prioritized for legal certainty, while others emphasized that high-priority ancestral land cannot be transferred absolutely because customary law protection must be upheld. Therefore, resolving disputes over the sale and purchase of high-priority ancestral land requires a balance between positive legal certainty and respect for customary law to achieve substantive justice.*

**Keywords:** Good Faith, Inheritance Land, High Inheritance Custom

### **INTRODUCTION**

Good faith in an agreement is contained in the provisions of Article 1338 paragraph (3) of the Civil Code (KUHPerdata) which states, "Agreement must be carried out in good faith", HoweverThe Civil Code does not

specifically regulate legal protection for the owner of goods (beziter) who acts in good faith (R. Rachmadhani Arya W; Dwi Agung Prasetyo; Salman Naufal Haq; Moch Ilyas Akbar R, 2024) in purchasing a fixed asset in the form of land. The Civil Code only regulates the protection of good

faith for movable goods as stipulated in Articles 530 to 532 which essentially provide norms regarding the owner of goods in good faith if he obtains the goods by obtaining ownership rights without knowing that there are defects, including not knowing that the goods he holds are not his property (Ibnu A'thilla Farhan; Moh. Safil Kafi, 2023).

The provisions regarding the acquisition of land in good faith can be seen in the formulation of Article 32 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration which states, "In the event that a certificate has been legally issued for a plot of land in the name of a person or legal entity who acquired the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand the implementation of these rights if within 5 (five) years from the issuance of the certificate they do not submit a written objection to the certificate holder and the Head of the Land Office concerned or do not file a lawsuit with the Court regarding control of the land or the issuance of the certificate." The provisions of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 are basically aimed at providing legal certainty and at the same time confirming legal protection for

control of land whose acquisition was carried out in good faith.

In addition to being found in the provisions of Government Regulation Number 24 of 1997, the normative acquisition of land through purchases in good faith has also been confirmed by the Supreme Court through the Circular of the Supreme Court of the Republic of Indonesia (SEMA) Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court, part of the results of the civil chamber plenary, which contains the legal principle, "Protection must be given to buyers in good faith even if it is later discovered that the seller is a person who is not entitled (the object of the land sale and purchase) and the original owner can only file a lawsuit for compensation against the seller who is not entitled". Although the protection of buyers in good faith has been regulated and confirmed, the limits for land buyers to be called parties in good faith have not been regulated in detail in various legal regulations, which has an impact on the lack of guidelines for legal practitioners, especially judges, to assess under what circumstances someone can be said to be a buyer in good faith.

In response to this legal vacuum, the Supreme Court has issued Circular Letter

of the Supreme Court of the Republic of Indonesia (SEMA) Number 4 of 2016 concerning the Implementation of the Legal Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court, part of the results of the civil chamber plenary, there are legal rules related to the criteriaGood faith buyers who need to be protected based on Article 1338 paragraph (3) of the Civil Code are as follows:Carrying out the sale and purchase of the land object with the legal procedures and documents as determined by the laws and regulations, namely: Purchase of land through a public auction or Purchase of land before the Land Deed Making Officer (in accordance with the provisions of Government Regulation Number 24 of 1997 or Purchase of customary/unregistered land carried out according to customary law provisions, namely carried out in cash and openly (before/with the knowledge of the local Village Head/Lurah), preceded by research regarding the status of the land object of sale and purchase and based on the research it shows that the land object of sale and purchase belongs to the seller, and the purchase is carried out at a reasonable price;

Exercise caution by examining matters relating to the land object being

agreed upon, including: The seller is the person who has the right/has the rights to the land that is the object of the sale and purchase, in accordance with the proof of ownership, or; The land/object being bought and sold is not in confiscated status, or; The land object being bought and sold is not in collateral/mortgage status, or: For certified land, information has been obtained from the BPN and the history of the legal relationship between the land and the certificate holder;

Judging from the formulation of legal principles in SEMA Number 4 of 2016, there are provisions regarding the purchase of customary land in good faith, so it can be concluded that there is implicit recognition of the legal act of buying and selling customary land by SEMA. The provisions regarding the purchase of customary land in good faith in SEMA are intended for all customary land in customary law communities that are still alive and whose existence is recognized in the territory of Indonesia.

## METHOD

This research uses a type of normative legal research (Roni Efendi; Saadatul Maghfira; Hebby Rahmatul Utamy; Erwin Radon Ardiyanto, 2023), also known as library research, meaning that this research is conducted by examining library materials and secondary

data (Soejono Soekanto dan Sri Mamudji, 2011). Secondary data is obtained from written materials originating from legal materials, legal regulations and previous research reports (Ismansyah, 2015). In this study, the secondary data sources are to confirm regulations in the Civil Code and vertical regulations such as Government Regulations, Supreme Court Circulars and other regulations relevant to legal aspects in the realm of local wisdom or customary law.

## RESULT AND DISCUSSION

### Normation of Minangkabau Customary Law Regarding Customary Land

In Minangkabau tradition, there are two terms used to refer to customary land: high inheritance property and low inheritance property. High inheritance property is any inheritance passed down from one's ancestors to another, with no known originator (Edison Piliang, 2015). While low inheritance is all the wealth earned from our father or mother (parents) during the marriage, plus gifts from our uncle to our nephew from the results of the uncle's own earnings. The fundamental difference between high and low patrimony lies in ownership and the transfer of rights. High patrimony belongs to the clan (family group based on female lineage) and is managed by the patriarch to the heir or eldest male in the clan, and

ownership cannot be transferred to another party. Low patrimony is personal property whose ownership can be transferred to heirs or other parties.

Minangkabau Customary Law has stipulated, that high-ranking heirlooms cannot be traded, as implied in the Minangkabau proverb “Jua indak makan bali, gadai indak makan sando”, which means that high-ranking heirlooms cannot be sold because they belong to the community, but they can be pawned temporarily but must be redeemed so that ownership does not change. Traditionally, the transfer of rights to high-ranking heirlooms is strictly regulated and can only be transferred through pawning, which does not change the ownership status. Moreover, efforts to pawn high-ranking heirlooms are limited to meeting certain circumstances, including: (1) *Gadih gadang indak balaki*. When a girl is getting older but doesn't have the money to get married. (2) *Mayik tabujua di ateh rumah*. When a member of the clan dies, costs are needed for the management and burial of his body. (3) *Rumah gadang katirisan*. When the traditional house is in a state of disrepair and requires renovation costs. (4) *Mambangkik batang tarandam*. When you need funds for the ceremony to inaugurate a headman (datuk).

Apart from the four conditions, high inheritance property cannot be transferred to another party, this aims to maintain and preserve the survival of the clan members in utilizing high inheritance property in the future from generation to generation. Normatively, Minangkabau Custom has regulated the prohibition of buying and selling high inheritance customary land, although it cannot be denied that in the practice that takes place in the midst of society, there is a transfer of ownership of high inheritance property belonging to the clan to another party on the basis of the agreement of all clan members who wish to sell their high inheritance property for various reasons and considerations.

### **Point of Contact for The mplementation of Good Faith Buyers of High Heritage Land**

SEMA Number 4 of 2016 has regulated the criteria for buyers of customary land in good faith, which is intended to provide guidelines for judges to assess the good or bad faith of a buyer of customary land by looking at the criteria as determined in the SEMA, including being carried out in cash and openly (in the presence/knowledge of the local Village Head/Lurah), preceded by research on the status of the land object of sale and purchase and based on the research shows that the land object of sale and purchase

belongs to the seller, and the purchase is made at a reasonable price. Thus, as long as these criteria have been met, someone who buys land with the status of customary land can be said to be a buyer in good faith.

The problem that arises in practice is when the provisions of the SEMA are confronted with disputes over high-ranking ancestral property arising from the legal act of buying and selling high-ranking ancestral land. There is a point of contact between the principle of legal protection for buyers in good faith and the protection of customary land. Traditionally, high-ranking ancestral land may not be bought and sold, but in practice, high-ranking ancestral land is often sold by both the head of the heirs as the party authorized to regulate the management and allocation of high-ranking ancestral property within their clan, and by clan members to other parties without the knowledge of all clan members. Buyers who have conducted research that shows the land being sold belongs to the seller and bought it for a fair price in a clear and cash manner are later sued by other clan members who were initially unaware and did not want their clan's high-ranking ancestral land sold. This ignorance of the clan members is often due, among other things, to the clan members seeking a livelihood away from home, thus being unaware that the high-

ranking ancestral land in their hometown has been sold. Over time, upon learning that the communally owned high ancestral land had been sold to another party, members of the clan then filed a lawsuit in court. The discussion is when such a dispute rolls into the court realm, which is more prioritized, whether legal protection for buyers of customary land in good faith by adhering to the provisions of SEMA Number 4 of 2016 and other legal regulations regarding buyers in good faith who must be protected, or protection of the validity of the norms of Minangkabau Customary Law which prohibits the sale and purchase of high ancestral property and ultimately the ownership of customary land is declared back as belonging to the clan as before?

### **Practice of Implementing Good Faith Buyers of High Heritage Land**

There are differing perspectives among legal practitioners regarding the interpretation of customary land and communal land. Some argue that customary land differs from communal land. One such distinction lies in the limitations placed on the treatment of both types of land. While customary land can be transferred absolutely, communal land cannot be transferred absolutely. In other words, all communal land is customary land, but not all customary land is

communal land. Based on this interpretation, the high heritage land, known in the Minangkabau customary law system as communal land, cannot be transferred absolutely from its origin. Another opinion holds that customary land regulations essentially include communal land, based on the premise that customary land or communal land is land within a customary law community, so that in this context there is no distinction between the two. On the other hand, the terminology of customary land is not found in the formulation of legal principles regarding the good faith purchase of customary land in SEMA Number 4 of 2016. These things are the background to the differences in views regarding the application of SEMA Number 4 of 2016 regarding buyers with good faith towards customary land.

The view that states that customary land is different from communal land, has consequences on the idea that when there is a dispute regarding the sale of high ancestral land, even though the buyer has purchased it in good faith, the sale and purchase is invalid because the sale and purchase of high ancestral land is contrary to and prohibited according to Minangkabau Customs. While the view that states that customary land includes also communal land, including high ancestral land, Minangkabau, when the sale and purchase of high ancestral land

occurs where the buyer has acted in good faith in carrying out a series of sale and purchase processes, then by referring to the provisions of SEMA Number 4 of 2016, the interests of the buyer with good faith must be protected for the acquisition of high ancestral land from the sale and purchase which is considered valid on condition that it meets the provisions related to the sale and purchase.

In practice in the legal area of West Sumatra, the implementation of SEMA Number 4 of 2016 regarding the provisions of good faith buyers of customary land, there is a judge's opinion in the decision considerations that implicitly states that high heritage land is included in customary land as regulated in SEMA, so that when a dispute arises from the sale and purchase of high heritage land, as long as the buyer meets the criteria as determined in SEMA, the buyer must be protected as a good faith buyer. The legal consequence of determining a good faith buyer is the absolute transfer of ownership of high heritage land to another party, namely the buyer, which means that the principle of legal certainty over guaranteed protection for good faith buyers of customary land is prioritized. However, there are also other opinions that state that Minangkabau high heritage land must be protected in accordance with the provisions of Minangkabau Customary Law. Basically,

the purpose of law is to protect interests, based on this postulate, when a dispute arises over the sale and purchase of high ancestral land in good faith by the buyer, two inversely proportional paradigms will emerge, namely the protection of individual interests as a legal certainty, or the protection of the validity of Minangkabau customary norms.

## CONCLUSION

SEMA Number 4 of 2016 has regulated the criteria for buyers of customary land in good faith, but in its implementation, there is a point of contact between the principle of legal protection for buyers of customary land in good faith and the protection of Minangkabau customary land, especially high heritage land which is traditionally prohibited from being sold. There are different points of view in interpreting the terms of customary land and customary land, namely the point of view that interprets customary land differently from customary land with the consequence that high heritage land is included in customary land which cannot be transferred absolutely to another party through sale and purchase, and the point of view that interprets the regulation of customary land which also includes customary land so that when a sale and purchase of high heritage land occurs on the basis of good faith from the buyer, the

high heritage land can be transferred to the buyer as a form of legal protection as long as the criteria as regulated in SEMA Number 4 of 2016 have been met.

In the practice that occurs in the legal area of West Sumatra, the implementation of SEMA Number 4 of 2016 regarding the provisions for buyers of customary land in good faith, there is a judge's opinion in the decision considerations that implicitly states that high heritage land is included in customary land as regulated in SEMA, therefore buyers of high heritage land in good faith must be protected so that it has implications for the transfer of ownership of high heritage land to the buyer, however there is another opinion that states that Minangkabau high heritage land must be protected so that its ownership cannot be transferred absolutely to another party as stipulated in Minangkabau Customary Law.

## REFERENCES

- Edison Piliang. (2015). *Tambo Minangkabau: Budaya dan Hukum Adat di Minangkabau*. Kristal Multimedia.
- Ibnu A'thillaah Farhan; Moh. Safil Kafi. (2023). *Peran Pelaksanaan Asas Iktikad baik Dalam Hukum Perjanjian*. 1(2), 532–538.
- Ismansyah. (2015). *Penyelidikan, Penyidikan dan Penuntutan Tindak Pidana di Bidang Perbankan*. PT Raja Grafindo Persada.
- R. Rachmadhani Arya W; Dwi Agung Prasetyo; Salman Naufal Haq; Moch Ilyas Akbar R. (2024). Analisa Yuridis Sengketa Tanah Hak Ulayat Masyarakat Matrilineal Adat Minangkabau (Studi Putusan Nomor: 72/Pdt/G/2011/Pn Pdg). *Indonesian Journal of Social Sciences and Humanities*, 4(2), 34–41.
- Roni Efendi; Saadatul Maghfira; Hebby Rahmatul Utamy; Erwin Radon Ardiyanto. (2023). Revitalization the Function of Traditional Nagari Density in Handling Criminal Cases Based on Restorative Justice. *Alfaud; Jurnal Ilmiah Sosial Keagamaan*, 7(2), 131–148.
- Soejono Soekanto dan Sri Mamudji. (2011). *Penelitian Hukum Normatif*. Rajawali Pers.