

## Legal Implications of Transfer of Land Rights Through Sale and Purchase Using a Replacement Certificate. Analysis of Legal Protection for the Original Owner

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### Article Info

#### Article history:

Accepted: 25 Agustus 2025

Publish: 1 September 2025

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#### Keywords:

Transfer Of Land Rights;

Replacement Certificate;

Good Faith Purchaser;

Legal Protection;

Unlawful Act.

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### Abstract

*The issuance of replacement certificates often has legal implications for the transfer of land rights, especially if the application is based on false information. This can lead to legal flaws in the basis of the sale and purchase rights and result in the loss of the original owner's rights. In Decision Number 1440 K/Pdt/2023, the Supreme Court protected the interests of a good-faith buyer (Defendant X/Sunaryono), but failed to provide adequate protection for PT. BSD, the original owner, who suffered losses due to the unlawful actions of Ibung Muhamad's heirs (Defendant I-IX) who submitted illegal replacement certificates. The purpose of this study is to analyze the legal implications of the transfer of land rights through a sale and purchase using replacement certificates and to evaluate the legal protection for the original owner in the context of Supreme Court Decision Number 1440/K/PDT/2023. The research method used normative juridical methods with a case approach and a statute approach. Secondary data in the form of laws and regulations, court decisions, and legal literature were analyzed qualitatively. The research results obtained are that the legal implications of the transfer of land rights through a sale and purchase using a replacement certificate issued unlawfully have resulted in the loss of PT. BSD's rights, even though the company obtained the rights through a formal procedure in the form of a Deed of Transfer of Rights. Because the rights were not registered and there was no PPAT deed, its legal position was weaker compared to the second buyer (Defendant X) who was deemed to have good intentions by the Supreme Court in Decision Number 1440 K / Pdt / 2023. The decision shows that more protection is given to buyers who meet the formal requirements according to PP Number 24 of 1997 and Article 1320 of the Civil Code, but leaves an imbalance because it ignores the losses of parties who lose their rights due to the issuance of an unlawful replacement certificate. Therefore, legal protection for the original owner who is harmed remains important to enforce based on Article 1365 of the Civil Code, the Formulation of SEMA 7 of 2012, and Article 29 of the Supreme Court Law, by filing a civil lawsuit after obtaining a criminal decision stating that there has been an unlawful act. This step is an effort to balance legal certainty with the principle of substantive justice in the national land system.*

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## 1. INTRODUCTION

The Indonesian land registration system adheres to the principle of negative publicity, which provides strong, but not absolute, evidentiary power for land title certificates. In practice, complications arise when replacement certificates are issued based on false reports of loss, which are then used as the basis for a sale or purchase with a third party.

Legal issues arise when a replacement certificate is issued based on false information by an heir claiming to be the rightful owner, even though the land has already been

transferred by the heir's parents to another party through a previous sale and purchase transaction. This situation creates a conflict of interest between the original owner, who has already entered into the transaction, and the buyer in good faith who bases their purchase on the officially registered replacement certificate.

Supreme Court Decision No. 1440/K/PDT/2023 sets an important precedent for resolving such disputes. In its ruling, the Supreme Court provided protection to good-faith buyers who had met all formal requirements in a land sale and purchase transaction, but also ignored the rights of the original owner who was harmed by the unlawful actions of the heirs in issuing replacement certificates. This study aims to analyze the legal implications arising from the transfer of land rights through sale and purchase using a replacement certificate and to evaluate the legal protection for the original owner in the context of the decision.

The transfer of land rights through sale and purchase is regulated by the Basic Agrarian Law (UUPA) and its derivative regulations. The land sale and purchase process must be evidenced by a deed of sale and purchase (AJB) drawn up by a Land Deed Official (PPAT). In the case of using a replacement certificate, this process becomes more complex. Replacement certificates are issued by the National Land Agency (BPN) when the original certificate is lost, damaged, or destroyed. The procedure for issuing replacement certificates is regulated by Regulation of the Head of BPN No. 3 of 1997. Applicants must attach a police report of loss, a sworn statement, and proof of announcements in the mass media. This process aims to prevent misuse and protect the rights of the original owner.

If a replacement certificate is used in a sale or purchase, the legal implications depend on the validity of the certificate's issuance. If the replacement certificate is legally issued and the sale or purchase procedure is carried out according to regulations, the transfer of title is considered valid. However, if the replacement certificate is issued unlawfully, for example by falsifying documents or without the knowledge of the original owner, the sale or purchase may be void. Several legal implications may arise:

Deed of Sale and Purchase (AJB) is Legally Defective. If the replacement certificate is issued invalidly, the AJB created based on that certificate may be deemed legally defective. The original owner may file a lawsuit to cancel the AJB.

Protection of Good Faith Buyers, if a buyer who is unaware of any defects in the replacement certificate can be considered a good faith buyer. However, if the original owner can prove that the replacement certificate was issued illegally, the rights of the original owner can be restored and Criminal sanctions: Parties who falsify documents to obtain a replacement certificate can be subject to criminal sanctions, including forgery and fraud.

## **2. RESEARCH METHOD**

The research method used is Normative Juridical to produce useful results. This normative juridical method is combined with literature related to the problem being studied, and prioritizes analysis using applicable laws and regulations as an important basis for analyzing legal issues. Secondary data sources, such as books, articles, and legal journals. This research aims to understand the relevant legal context and interpret existing provisions. The approaches used in this research are a conceptual approach through a doctrinal perspective, as well as a statutory approach, which analyzes laws and regulations that correlate and relate legally to the problem under study. The author's data collection method uses a literature study related to the object and cites references including Legislation, Journals, Books, Articles and the Internet. The data analysis method used is a qualitative analysis sourced from legislation, expert views, legal concepts and theories as well as an understanding of the results of the analysis itself.

### 3. RESEARCH RESULTS AND DISCUSSION (12 Pt)

#### 3.1. Legal Implications of Transfer of Land Rights Through Sale and Purchase Using Replacement Certificates.

Buying or selling land with a replacement certificate is legally valid, provided the process is carried out correctly. A replacement certificate has the exact same legal force as the original certificate. This means that the transfer of land rights (buying and selling) can still be carried out as usual, without any obstacles. It is important to remember that the sale and purchase process with a replacement certificate must still follow applicable procedures, namely by preparing a Deed of Sale and Purchase (AJB) before a Land Deed Official (PPAT). The PPAT will ensure all documents are complete and the process complies with existing regulations.

A replacement certificate is a crucial document issued by the National Land Agency (BPN) to replace an obsolete land certificate, with the same legal force as the original. The issuance of replacement certificates is regulated by Government Regulation Number 24 of 1997 concerning Land Registration.

To avoid problems in the future, here are some important points you need to pay attention to when buying and selling with a replacement certificate:

- **Authenticity of the Replacement Certificate:** Ensure the replacement certificate you use is valid and issued by the National Land Agency (BPN). You can verify its authenticity directly at the BPN office.
- **Completeness of Documents:** In addition to the replacement certificate, ensure that all other documents required for the sale and purchase are complete, such as the seller's and buyer's ID cards, Family Card, proof of PBB payment, and others.
- **Process at the PPAT:** Sales and purchases with replacement certificates must still be conducted before the PPAT. The PPAT will assist in the transfer of ownership of the certificate from the seller to the buyer.

To ensure legal certainty regarding the transfer of land rights through a sale and purchase, sellers must meet formal requirements regarding the land transfer procedures. The procedures for transferring land rights are regulated by the UUPA. Land transfer is the transfer of land rights from the previous landowner to the new landowner through a transfer.

Referring to Supreme Court Decision Number 1440K/Pdt/2023, PT. Bumi Serpong Damai (PT. BSD) as the initial land owner lost its rights to the land that had previously been legally acquired through a deed of relinquishment of rights. This occurred after the issuance of a replacement certificate in the name of Ibung Muhamad's heirs. The replacement certificate then became the basis for a sale and purchase with another party, namely Sunaryono, and resulted in the issuance of a new ownership certificate in the name of the buyer. The Supreme Court in its decision prioritized the protection of a good-faith buyer (Sunaryono) based on the considerations that the transaction was carried out on officially certified land, the sale and purchase used a valid PPAT Deed, the buyer had made full payment, the land had been physically controlled by the buyer, and the certificate had been transferred. On the other hand, PT. BSD was deemed to have no strong legal standing because it only had a deed of relinquishment of rights, did not have clear proof of repayment, and had not controlled the land for a long time.

This situation directly creates detrimental legal implications for PT. BSD, as it eliminates its ownership rights to land that was legally acquired without any effective legal protection mechanism for its legal status. Land rights are considered legally

acquired if they meet the formal and material requirements as stipulated in laws and regulations.

Supreme Court Decision No. 1440/K/PDT/2023 has several weaknesses in providing legal protection, it does not consider the rights of the original owner, the decision only focuses on protecting buyers in good faith without accommodating losses of PT. BSD, ignores SEMA No. 7/2012, does not refer to guidelines that affirm the rights of the original owner to claim compensation and is wrong in assessing the legal position, equating the position of PT. BSD as the original owner with Sunaryono as the buyer.

Even though the Supreme Court's decision has permanent legal force, PT. BSD can still pursue other legal remedies:

1. Criminal lawsuit first: File charges against the heirs for the crime of falsifying documents (Articles 264 and 266 of the Criminal Code).
2. Separate civil suit: Claiming for damages based on unlawful acts after a criminal decision has been rendered with permanent legal force.
3. Judicial review: For limited reasons in accordance with the provisions of procedural law

In the context of PT. Bumi Serpong Damai, the acquisition of the land has gone through the correct legal procedures, namely through a Deed of Sale and Purchase Agreement and/or Deed of Release of Rights, made by a Notary and the Transaction was carried out with a party who has the basis of control over the land such as a girik, a valid land certificate. With the fulfillment of these elements, PT. BSD is legally the rightful owner of the land. However, PT. BSD's rights and control over the land were lost due to several legal events, the first being the issuance of a replacement certificate by the National Land Agency (BPN) in the name of Ibung Muhamad's heirs without the involvement of PT. BSD. Second, the replacement certificate was then used as the basis for the sale and purchase transaction by the heirs to Sunaryono. Third, as a result of this transaction, a new certificate was issued in Sunaryono's name, transferring legal and administrative ownership of the land to Sunaryono. As a result, PT. BSD lost its position as the legal owner under the land system.

### **3.2. The Validity of Sale and Purchase from a Civil Law Perspective**

The validity of a land sale and purchase must meet the requirements of an agreement in Article 1320 of the Civil Code, namely agreement of the parties, capacity to make an agreement, a specific object, and a lawful cause. In this case, there are two agreements that need to be analyzed. Agreement A (between PT. BSD and H. Ruchiyat in 2003) has met the four requirements for a valid agreement. The agreement of the parties is proven by the signing of the deed before a notary, the capacity of the parties can be assumed from the involvement of authorized officials, the object of the agreement has a clear identity, and the cause of the agreement does not conflict with the law.

Agreement B (between the heirs and Sunaryono in 2013) encountered problems with the requirement for a lawful cause. Although formally drawn up before a Land Deed Official (PPAT), this agreement was based on a replacement certificate obtained through false information. The District Court declared that the heirs had committed an unlawful act in issuing the replacement certificate, thus lacking legal authority to sell the land.

From a land law perspective, land sales and purchases must meet the principles of transparency and cash. The transparency principle requires transactions to be conducted openly before authorized officials, while the cash principle requires the

transfer of rights simultaneously with payment of the price. The agreement meets the transparency principle because it was made before a notary and the cash principle because there has been full payment. However, this agreement does not meet the formal requirements for the transfer of land rights because it was not made by a Land Deed Official (PPAT) as required by Article 37 of Government Regulation No. 24 of 1997. The agreement meets the formal requirements because it was made before a Land Deed Official (PPAT) and has been registered at the Land Office. However, this agreement is problematic in the material requirements because the seller does not have legal authority over the land being sold.

However, failure to fulfill these formal requirements does not automatically render the sale and purchase agreement void or invalid under civil law, as a sale and purchase agreement can still be considered valid if it meets the general requirements of an agreement as stipulated in Article 1320 of the Civil Code. However, failure to fulfill these formal requirements results in an imperfect agreement and does not create legal consequences in the land registration system, thus preventing the purchaser from obtaining legal certainty or legal protection regarding the land rights they acquire. This uncertainty has the potential to trigger future disputes, both between the parties and against third parties.

The actions carried out by the heirs (Defendants I-IX) fulfill the elements of an unlawful act according to Article 1365 of the Civil Code:

1. There was an act: Making false statements in the police report and requesting the issuance of a replacement certificate.
2. Unlawful: Contrary to PT. BSD's rights and violates morality.
3. Misdemeanor: An act done intentionally.
4. Loss: PT. BSD lost rights to land that has economic value.
5. Causal relationship: PT. BSD's losses were caused directly by the actions of the heirs.

Fulfilling formal requirements and registering land are crucial elements in a legally valid land sale and purchase transaction. This reinforces the principles of legality and publicity in national land law, as stipulated in Article 32 paragraphs (1) and (2) of Government Regulation Number 24 of 1997. These principles provide legal certainty and protection not only to the parties to the transaction, but also to the general public. The certificate resulting from the registration process has strong evidentiary power as evidence of land rights and serves as a guarantee of legal ownership. Legal protection, according to Soerjono Soekanto, is an action aimed at fulfilling rights and providing a sense of security to the community through the application of positive legal norms. In the context of land disputes, legal protection becomes crucial when there is a violation of the principle of *nemo plus juris*- a person cannot transfer rights that he does not actually own.

#### 4. CONCLUSION

The transfer of land rights through a sale and purchase using a replacement certificate obtained based on false information has complex legal implications. Supreme Court Decision No. 1440/K/PDT/2023 shows that the Indonesian land law system tends to prioritize the protection of buyers in good faith but does not provide adequate protection for original owners who are harmed. A reformulation of the approach to handling land disputes involving replacement certificates is needed, taking into account the principle of balance between legal certainty, justice, and expediency. The legal system must provide an effective compensation mechanism for original owners while still protecting buyers in good faith. Ideal legal protection is one that can accommodate the interests of all parties through

an equitable *protection* approach, where protection for buyers in good faith does not eliminate the liability of the perpetrator of the unlawful act and the right of the original owner to obtain recovery.

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