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# Reconstructing Legal Protection for Good Faith Purchasers of Juridically Defective Land Sale and Purchase Deeds

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**Abstract**
Land sale and purchase deeds (AJB) drawn up by Land Deed Officials frequently contain juridical defects, such as forged identities, the seller's lack of title, disputed objects, or procedural irregularities, which surface only after the transfer has been registered. Under Indonesia's negative publication system with a positive tendency, such defects expose good faith purchasers to the annulment of their deeds and certificates, while the standard of good faith remains scattered across the Civil Code, Government Regulation No. 24 of 1997, and Supreme Court Circular Letters. This normative juridical study employs statute, conceptual, case, and comparative approaches, drawing on the Torrens systems of Australia and Malaysia and the English Land Registration Act 2002, and is framed by legal protection, legal certainty, corrective justice, and legal system theories. It finds three structural deficits: good faith is assessed subjectively and ex post; positive law does not differentiate the consequences of different defects; and no state compensation exists for the innocent party who loses the land. The novelty of this article is the Verified Good Faith Layered Protection Model, which integrates a digitally verified due diligence protocol generating a rebuttable presumption of good faith, a three-tier taxonomy of deed defects protecting subsequent purchasers on the logic of deferred indefeasibility, a Land Title Assurance Fund, and proportional liability of officials and the state. The model offers a normative design for reforming Indonesian land registration law in the era of electronic certificates.

**Info Artikel**

**Kata Kunci:**
Akta Jual Beli Tanah; Cacat Yuridis; Pembeli Beritikad Baik; Pendaftaran Tanah; Rekonstruksi Hukum

**Abstrak**
Akta Jual Beli (AJB) tanah yang dibuat Pejabat Pembuat Akta Tanah kerap mengandung cacat yuridis, seperti pemalsuan identitas, ketiadaan hak penjual, objek bersengketa, atau penyimpangan prosedur, yang baru terungkap setelah peralihan hak didaftarkan. Dalam sistem publikasi negatif bertendensi positif, cacat tersebut menempatkan pembeli beritikad baik pada risiko pembatalan akta dan sertipikat, sementara standar itikad baik tersebar dalam KUHPerdata, PP Nomor 24 Tahun 1997, dan Surat Edaran Mahkamah Agung. Penelitian yuridis normatif ini menggunakan pendekatan perundang-undangan, konseptual, kasus, dan perbandingan dengan sistem Torrens di Australia dan Malaysia serta Land Registration Act 2002 Inggris, dengan pisau analisis teori perlindungan hukum, kepastian hukum, keadilan korektif, dan sistem hukum. Penelitian menemukan tiga defisit struktural: itikad baik dinilai secara subjektif dan ex post; hukum positif tidak membedakan akibat hukum berbagai jenis cacat; dan tidak tersedia kompensasi negara bagi pihak tidak bersalah yang

kehilangan tanah. Kebaruan artikel ini adalah Model Perlindungan Berlapis Berbasis Itikad Baik Terverifikasi yang memadukan protokol uji tuntas terverifikasi secara digital yang melahirkan praduga itikad baik yang dapat dibantah, taksonomi tiga tingkat cacat akta yang melindungi pembeli lanjutan berdasarkan logika deferred indefeasibility, Dana Jaminan Hak atas Tanah, serta tanggung jawab proporsional pejabat dan negara. Model ini menawarkan desain normatif bagi pembaruan hukum pendaftaran tanah Indonesia di era sertipikat elektronik.

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## INTRODUCTION

Land occupies a distinctive position in the Indonesian legal system because it carries not only economic value but also a social function and a constitutional dimension, as mandated by Article 33(3) of the 1945 Constitution. Consequently, the state is obliged to guarantee legal certainty over land rights through land registration as ordered by Article 19 of Law No. 5 of 1960 on the Basic Agrarian Principles (BAL). Government policies on asset legalization and agrarian reform show that land titling is positioned as the principal instrument of legal certainty as well as of community economic empowerment (Medaline & Moertiono, 2023).

Nevertheless, such certainty has not been fully realized because Indonesia adopts a negative publication system with a positive tendency. Under this system, a certificate serves as strong but not absolute evidence, so the data it contains may still be rebutted by a party able to prove otherwise. Previous studies have shown that the negative publication system in Government Regulation No. 24 of 1997 leaves loopholes through which landowners may lose their rights without adequate state protection, so that the value of legal certainty embraced by the implementing regulation is inconsistent with the certainty and protection guaranteed by the Constitution (Suharyono, 2019).

The problem becomes more complex at the stage of transfer through sale and purchase. Article 37(1) of Government Regulation No. 24 of 1997 provides that the transfer of land rights through sale and purchase may only be registered if evidenced by a deed drawn up by a Land Deed Official (*Pejabat Pembuat Akta Tanah*, PPAT). The land sale and purchase deed (*Akta Jual Beli*, AJB) therefore functions as an authentic deed forming the basis for registration of the transfer. An authentic deed in principle has perfect evidentiary force, since it is made by or before an authorized official in the form prescribed by law, as stipulated in Article 1868 of the Civil Code (Moertiono & Mansar, 2022).

In practice, however, AJBs frequently contain juridical defects, whether because the seller is not the rightful owner, identities or signatures are forged, the land is under dispute or attachment, or the procedure for drawing up the deed has not been observed. Studies of Indonesian land registration data show that juridical and physical data still suffer from problems of completeness, consistency, duplication, and integrity, so that the risk of defective transactions cannot be separated from the quality of the land database itself (Kusmiarto et al., 2021).

When such defects come to light, the most vulnerable party is the purchaser who has paid a fair price, transacted before a PPAT, and registered the right. Such purchasers often face claims for annulment of the deed and certificate, and in some cases are even qualified as having committed an unlawful act. Research on Supreme Court decisions demonstrates that disputes over land possessed without right often culminate in the construction of an unlawful act under Article 1365 of the Civil Code, causing losses to the party in possession of the land (Moertiono, 2020).

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The Supreme Court has attempted to fill the normative vacuum through Supreme Court Circular Letter (SEMA) No. 7 of 2012, which affirms that protection must be granted to a good faith purchaser even if the seller is later found not to be entitled, and SEMA No. 4 of 2016, which formulates the criteria of a good faith purchaser, namely conducting the sale according to valid procedures and documents and acting prudently by examining material facts concerning the object. However, a SEMA is not legislation within the hierarchy of Law No. 12 of 2011, so its binding force on Land Offices and administrative courts is limited. Studies on complete systematic land registration likewise emphasize that the concept of good faith in land law still requires normative operationalization so that the state genuinely functions as a guarantor (Firmansyah & Jamilah, 2022).

At the global level, a similar debate has long taken place in jurisdictions adopting the Torrens system, namely whether the registration of a forged instrument creates an indefeasible title immediately (*immediate indefeasibility*) or only for a subsequent good faith purchaser (*deferred indefeasibility*). The Malaysian experience shows that the choice of doctrine decisively determines the fate of both the original owner and the good faith purchaser in forgery cases (Teo, 2002).

At the same time, Indonesian land law is entering a phase of major transformation. The Job Creation Law, now enacted through Law No. 6 of 2023, together with Government Regulation No. 18 of 2021, has reshaped the land regulatory landscape, including by introducing electronic land registration. This post-Job Creation regulatory paradigm requires an approach to legal protection that is not merely administrative but also safeguards the rights of affected legal subjects (Moertiono, 2023).

The digitalization of land registration through Regulation of the Minister of ATR/Head of BPN No. 3 of 2023 on the Issuance of Electronic Documents in Land Registration opens new opportunities for real-time data verification, but also brings cybersecurity risks and the forgery of electronic documents. International literature notes that Indonesian regulation still leaves gaps against false documentation and cyberattacks in electronic land registration (Syarief, 2022).

Based on the foregoing, this study addresses three problems: a). how juridical defects in land AJBs are constructed and what their implications are for the transfer of rights and the position of good faith purchasers; b). why the legal protection of good faith purchasers under Indonesian positive law has not delivered certainty and justice; and c). what the ideal reconstruction of legal protection for good faith purchasers in an electronic land registration system should be. Legal protection is understood here in the two dimensions developed by Philipus M. Hadjon, namely preventive and repressive protection (Moertiono, 2021).

The novelty of this study lies in three aspects. First, previous studies generally stop at listing the criteria of good faith or analyzing particular decisions, whereas this article offers the objectivation of good faith through a digitally verified due diligence protocol. Second, it formulates a three-tier taxonomy of AJB defects with differentiated legal consequences, which is unknown in Indonesian positive law. Third, it proposes a Land Title Assurance Fund as a mechanism of corrective justice, which in other jurisdictions forms part of state-guaranteed registration systems through indemnity for parties harmed by rectification of the register (Lees, 2013).

## RESEARCH METHOD

This is normative juridical research focusing on the principles, norms, and doctrines of land law. It employs four approaches: a statute approach to the BAL, the Civil Code, Government Regulation No. 24 of 1997, Government Regulation No. 37 of 1998 in conjunction with Government Regulation No. 24 of 2016, Government Regulation No. 18 of 2021, and Ministerial Regulation of ATR/BPN No. 3 of 2023; a conceptual approach to the concepts of good faith,

juridical defect, and legal protection; a case approach to court decisions on land sale disputes; and a comparative approach to the Torrens system and the English land registration system. The case approach was chosen because judicial practice shows that disputes over land possession often intersect with civil and criminal dimensions simultaneously, as in cases of land encroachment following a civil judgment (Caniago et al., 2025).

Primary legal materials comprise legislation, SEMAs, and court decisions; secondary materials comprise articles in accredited national journals and reputable international journals; and tertiary materials comprise legal dictionaries and encyclopedias. International literature on land administration is used to depict the empirical condition of Indonesia's land registration system, including the results of data quality assessments in the complete systematic land registration program (Aditya et al., 2020).

The legal materials were analyzed prescriptively and qualitatively using grammatical, systematic, and teleological interpretation, and then synthesized to formulate a normative reconstruction. Reconstruction is understood as the reorganization of legal substance, structure, and culture in line with Lawrence M. Friedman's legal system theory, which has also been applied in studies on the professional responsibility of deed officials in transactions involving problematic objects (Moertiono & Lubis, 2025).

## RESULTS AND DISCUSSION

### The Juridical Construction of Defects in Land Sale and Purchase Deeds and Their Implications for the Transfer of Rights

Land sale and purchase under national land law rests on customary law as referred to in Article 5 of the BAL, and is therefore *terang* (transparent), *tunai* (cash), and *riil* (real). *Terang* means it is performed before an authorized official, namely the PPAT; *tunai* means the transfer occurs simultaneously with payment; and *riil* means the parties' will is realized in a concrete act. The AJB drawn up by the PPAT serves as evidence that the legal act has occurred and as a prerequisite for registering the transfer. Accordingly, the quality of the AJB depends heavily on the diligence of the official in assessing the validity of the subject and object of the legal act (Moertiono, 2024).

Conceptually, juridical defects in an AJB may originate from the non-fulfilment of the conditions for a valid agreement under Article 1320 of the Civil Code. Defects in the subjective conditions, namely consent and capacity, including defects of will due to mistake, duress, or fraud under Article 1321 of the Civil Code, render the agreement voidable (*vernietigbaar*). Conversely, defects in the objective conditions, namely a certain object and a lawful cause, render the agreement null and void (*nietig*). In the context of deeds whose object or cause violates the law, studies of sale and purchase deeds connected with criminal acts show that such deeds lose their basis of validity and give rise to questions of liability for the official who drew them up (Moertiono, 2024).

Besides substantive defects, an AJB may contain formal defects, namely violations of the procedure for drawing up the deed, such as failure to check the certificate at the Land Office as required by Article 97 of Regulation of the State Minister of Agrarian Affairs/Head of BPN No. 3 of 1997 and its amendments, the absence of the parties, or the signing of a deed that was not read out. Such procedural violations may reduce the evidentiary force of an authentic deed to that of a private deed. Thus, the perfect evidentiary force of an authentic deed attaches only insofar as the formal requirements of authority and form are fulfilled (Moertiono & Mansar, 2022).

The third category comprises defects originating from land registration data itself, such as duplicate certificates, overlapping parcels, or unmapped certificates. Research on certificate validation in Indonesia found that the complete systematic land registration program has prioritized quantity over quality, leaving many certificates unmapped and making tenure insecurity a real risk.

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Defects of this kind originate from the state as the operator of registration, not from the parties (Aditya et al., 2021).

The implications of these three categories for the purchaser differ greatly, yet judicial practice tends to treat them uniformly: where it is proven that the seller was not entitled or that forgery occurred, the AJB is annulled and the certificate in the purchaser's name is ordered to be cancelled on the basis of the principle *nemo plus iuris transferre potest quam ipse habet*. The use of the unlawful act construction in land possession disputes shows that physical possession of land without a valid title may be assessed as unlawful, regardless of whether the possessor knew of the defect in the title (Moertiono, 2020).

Such uniform consequences are problematic from the perspective of legal certainty. Gustav Radbruch places legal certainty among the basic values of law alongside justice and expediency; certainty requires that legal subjects be able to foresee the legal consequences of their conduct. A purchaser who has completed every formal procedure before a state official yet still loses the right experiences uncertainty generated by the system rather than by his or her own fault. This confirms the finding that the value of legal certainty underlying the negative publication system is incoherent with constitutional legal certainty (Suharyono, 2019).

## Disharmony in the Legal Protection of Good Faith Purchasers in Indonesian Positive Law

Good faith in Indonesian civil law has two dimensions. The first is good faith in the performance of contracts under Article 1338(3) of the Civil Code, which is objective (propriety). The second is good faith in the possession and acquisition of property, which is subjective, namely ignorance of a defect in title, as reflected in Article 531 of the Civil Code. The Civil Code expressly protects the good faith purchaser of movable goods through Article 1977 but provides no equivalent norm for immovable property. This vacuum makes the protection of good faith land purchasers dependent on jurisprudential construction. Studies on good faith in land registration emphasize the need for the state to act as guarantor of the accuracy of data registered in good faith (Firmansyah & Jamilah, 2022).

The only land norm that explicitly links good faith to certainty of title is Article 32(2) of Government Regulation No. 24 of 1997, which provides that where a certificate has been lawfully issued in the name of a person or legal entity that acquired the land in good faith and physically controls it, other parties may no longer claim the right if they do not file an objection or lawsuit within five years of issuance. This provision, which adopts the institution of *rechtsverwerking*, has three weaknesses: it is located only at the level of a government regulation; the phrase "lawfully issued" itself opens room to challenge the validity of issuance; and it is textually formulated in the context of certificate issuance, so its application to subsequent transfers remains contested. Such normative weaknesses leave the protection of rights fragile within a negative publication system (Suharyono, 2019).

SEMA No. 7 of 2012 and SEMA No. 4 of 2016 provide substantive guidance, including criteria of purchaser prudence: verifying that the seller is the lawful owner, that the land is not under attachment, not encumbered by a mortgage right, and not in dispute, and that the price paid is fair. Nevertheless, as internal judicial policy instruments, SEMAs bind only judges in the general courts and do not directly bind Land Offices or administrative courts. As a result, a purchaser may be declared to be in good faith by a district court while the certificate is still cancelled through an administrative decision or an administrative court judgment. Such cross-regime disharmony is also evident in land law enforcement practice, which combines civil and criminal dimensions over the same disputed object (Caniago et al., 2025).

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A further problem is that good faith is assessed *ex post* by judges after a dispute arises, with non-uniform standards of proof. Purchasers have no *ex ante* instrument to ensure that the prudential steps they have taken will be recognized as good faith. From the perspective of Hadjon's legal protection theory, this reflects weak preventive protection, because legal subjects are not given the opportunity to obtain certainty before a decision or dispute occurs, so that the entire burden of protection is shifted to repressive protection through the courts (Moertiono, 2021).

In terms of legal structure, the PPAT holds a strategic position as the front line in preventing AJB defects. However, the PPAT's duty of care is still formulated in general terms in Government Regulation No. 37 of 1998 in conjunction with Government Regulation No. 24 of 2016 and its implementing regulations, without measurable due diligence standards or a guarantee mechanism for third-party losses. Studies on the professional ethics of deed officials stress that the principles of prudence, honesty, and independence are prerequisites for preventing deeds from becoming a means of legitimizing transactions involving problematic objects (Moertiono & Lubis, 2025).

At the level of data substance, digital transformation has not fully resolved the problem. An assessment of the digital readiness of land services found that the indicators of cybersecurity, privacy, and system resilience scored lowest. This means that digitalization risks shifting the modus operandi of forgery from physical to electronic documents unless accompanied by an adequate legal protection design (Kusmiarto et al., 2021).

From the standpoint of data protection, electronic land registration requires legal guarantees for the juridical data and personal data of right holders, since data leakage is the main gateway for identity forgery in land transactions. Such protection includes the obligation of the Ministry of ATR/BPN as electronic system operator to maintain the confidentiality and integrity of data (Dharma et al., 2023).

Nevertheless, electronic certificates have been recognized as having legal standing as valid evidence in the land case proof system, in line with the Electronic Information and Transactions Law. This recognition is important because it allows the results of digital verification to be used as evidence in court, including to prove the purchaser's prudence (Noor, 2021).

This disharmony reveals three structural deficits. The first is a normative deficit, namely the absence of a statutory norm defining the good faith purchaser and its legal consequences for immovable property. The second is a differentiation deficit, namely the failure to distinguish the legal consequences of formal, subjective, and objective-absolute defects. The third is a compensation deficit, namely the absence of a state compensation mechanism for the innocent party who loses the land, so that the losing party can only sue the seller, who is often untraceable or insolvent. These three deficits contradict the purpose of land registration, which positions the certificate as an instrument of legal certainty and protection for right holders (Medaline & Moertiono, 2023).

## Comparison with the Torrens System and the English Land Registration System

The Torrens system rests on three principles: the mirror principle, whereby the register accurately reflects all rights in land; the curtain principle, whereby the purchaser need not investigate the history behind the register; and the insurance principle, whereby the state guarantees the accuracy of the register and compensates those harmed by it. In jurisdictions with *immediate indefeasibility*, such as Australia and New Zealand, the registration of a forged instrument still confers an indefeasible title on a registrant not involved in the fraud, while the original owner receives compensation. Malaysia, by contrast, through Section 340 of the National Land Code 1965, adopts *deferred indefeasibility*, under which protection is granted only to a good faith purchaser for value who

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acquires from the recipient of the forged instrument, not to the immediate recipient from the forger (Teo, 2002).

The *deferred indefeasibility* model is relevant to Indonesia because it balances two equally legitimate interests: that of the original owner who is the victim of forgery and that of the subsequent purchaser who transacts in reliance on the register. The immediate recipient from the forger is best placed to detect the forgery, whereas the subsequent purchaser reasonably relies on the accuracy of state data. This logic of risk allocation accords with the theory of corrective justice, which requires that the restoration of loss be borne proportionally by the party best able to prevent it (Teo, 2002).

The English system under the Land Registration Act 2002 takes a different path through rectification of the register combined with state indemnity. When the register is altered to correct a mistake, the party prejudiced by the alteration may obtain indemnity; conversely, if the register is not altered, the party who loses the right is compensated. This mechanism affirms that in a dispute between two innocent parties the law need not end in an "all-or-nothing" solution (Lees, 2013).

For Indonesia, the most important lesson from both systems lies not in an immediate shift to a positive publication system but in the existence of a guarantee mechanism covering the losses of the losing party. Without such a mechanism, every judgment protecting a good faith purchaser will be perceived as unjust by the original owner, and vice versa. The need for a trustworthy registration system is also shown by the experience of countries using technology to enhance the transparency of all land administration processes, not only the registration of rights (Ameyaw & de Vries, 2020).

Pilot projects on smart contracts and blockchain in Sweden, Australia (New South Wales), and Canada (British Columbia) show that a hybrid approach, combining new technology with existing infrastructure while retaining the land registry as the final arbiter of valid claims, is more realistic than wholesale transformation. This hybrid approach suits Indonesia's current transition from analogue to electronic certificates (Bennett et al., 2021).

## Reconstruction: The Verified Good Faith Layered Protection Model

Building on the foregoing analysis of deficits and comparisons, this study proposes the Verified Good Faith Layered Protection Model. The model rests on legal protection theory, which demands a balance between preventive and repressive protection, as well as on legal certainty theory and corrective justice theory. Methodologically, it reconstructs the three elements of Friedman's legal system: substance (the norms of good faith and the taxonomy of defects), structure (the roles of the PPAT, BPN, and the courts), and culture (the habit of due diligence in society) (Moertiono, 2021).

The first layer, objectivation of good faith through a verified due diligence protocol. Good faith, hitherto assessed subjectively and *ex post*, is reconstructed into an objective standard verifiable *ex ante*. The protocol comprises: a). verification of the seller's identity through integration with population and biometric data; b). electronic checking of the juridical status of the parcel, including attachment, blocking, mortgage rights, and dispute records; c). validation of physical data through integrated parcel maps; d). confirmation that the price corresponds to market value or the land value zone; and e). electronic notification to the registered right holder before the transfer is recorded. Validation of physical data is essential given the finding that the spatial quality of land registration data still varies across data collection methods (Aditya et al., 2020).

A purchaser who completes all stages of the protocol obtains electronic proof of verification giving rise to a rebuttable presumption of good faith (*praesumptio bonae fidei*). Under this construction, the burden of proof shifts: the party alleging the purchaser's bad faith must prove that

the purchaser knew or ought to have known of the defect. This shift is possible because electronic documents resulting from verification have the status of valid evidence (Noor, 2021).

The notification mechanism to the registered right holder also serves as an effective anti-forgery instrument, as the original owner is given an opportunity to object before the transfer is recorded. Its implementation must be accompanied by strict cybersecurity standards, including encryption, multi-factor authentication, and audit trails, given the vulnerability of electronic land registration systems to attacks and false documentation (Syarief, 2022).

The second layer, a three-tier taxonomy of AJB defects with differentiated legal consequences. This study proposes the following classification. Tier I, formal-administrative defects, namely procedural violations that do not concern the seller's authority or the parties' will; the consequence is convalidation without annulling the transfer, accompanied by sanctions on the PPAT. Tier II, subjective defects, namely defects of will or capacity; the consequence is voidability, but annulment may not prejudice a verified subsequent good faith purchaser. Tier III, objective-absolute defects, namely forgery or the seller's lack of title; the consequence is nullity as against the immediate recipient, while a verified subsequent good faith purchaser remains protected according to the logic of *deferred indefeasibility*, and the original owner is compensated. This differentiation answers the need for certainty emphasized in studies on the protection of land rights through asset legalization (Medaline & Moertiono, 2023).

The differentiation of consequences must also take into account the particular character of unlawful acts in land disputes. A verified good faith purchaser cannot be qualified as committing an unlawful act merely because he or she possesses land whose title is later declared defective, since the element of fault under Article 1365 of the Civil Code is not fulfilled. Civil liability should be directed at the party who actually committed the unlawful act, namely the unentitled seller or the forger (Moertiono, 2020).

The third layer, a Land Title Assurance Fund. To close the compensation deficit, this study proposes the establishment of a Land Title Assurance Fund managed by a public service agency under the Ministry of ATR/BPN. It may be financed from a small portion of non-tax state revenue from land services and a premium contribution on each transfer. The fund would compensate innocent parties who lose land, whether original owners or purchasers, and the state would acquire a right of subrogation against the wrongdoers, including forgers and negligent PPATs. This mechanism adopts the guarantee principle known in indemnity-based registration systems (Lees, 2013).

The existence of an assurance fund also gives the state an incentive to continuously improve the quality of registration data, since every defect originating from state data would carry a fiscal burden. This incentive is relevant given the persistent data quality problems in systematic registration and the need for policy reform to secure tenure under certificates already issued (Aditya et al., 2021).

The fourth layer, proportional liability of the PPAT and the state. The reconstruction of legal structure requires mandatory due diligence standards for PPATs, recorded in the deed, together with compulsory professional liability insurance. A PPAT who has correctly applied the protocol is released from liability for defects undetectable by the system, while a negligent PPAT bears losses proportionally through the subrogation mechanism. Such affirmation of professional responsibility is consistent with studies on deed officials stressing that the authority to make authentic deeds is always attached to responsibility for the formal truth of the deed (Moertiono & Mansar, 2022).

State liability is affirmed where a defect originates from errors in registration data, such as duplicate certificates or overlapping parcels. In such conditions, a verified good faith purchaser must not bear the consequences of administrative errors by the state. This reinforcement accords

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with the legal protection framework that positions the state as responsible for the security and accuracy of electronic land registration data (Dharma et al., 2023).

The fifth layer, strengthening temporal certainty and elevating the normative hierarchy. The *rechtsverwerking* provision in Article 32(2) of Government Regulation No. 24 of 1997 should be elevated into a land statute and extended to subsequent transfers, while removing the phrase that opens room to re-examine the validity of issuance as far as verified good faith purchasers are concerned. This gradually steers Indonesia's publication system toward a limited positive publication system supported by validated electronic data, in line with the policy direction of digitalizing land services (Kusmiarto et al., 2021).

The reconstruction is summarized in Table 1, which maps each aspect of the existing regime against its weaknesses and the proposed design (see Moertiono, 2023).

**Table 1**. Matrix for Reconstructing the Legal Protection of Good Faith Purchasers

| Aspect | Existing Condition | Weakness | Proposed Reconstruction |
|---|---|---|---|
| Standard of good faith | Article 1338(3) Civil Code; SEMA 7/2012 and SEMA 4/2016 | Subjective, assessed ex post, not binding on BPN and administrative courts | Verified due diligence protocol; rebuttable presumption of good faith; regulated by statute |
| Legal consequences of AJB defects | Void/voidable without differentiation; nemo plus iuris principle | Purchaser bears the risk of undetectable defects | Three-tier taxonomy of defects; protection of subsequent purchasers (deferred indefeasibility) |
| Compensation | Damages claim against the seller | Seller untraceable or insolvent | Land Title Assurance Fund with state subrogation |
| Role of the PPAT | GR 37/1998 jo. GR 24/2016; general duty of care | No measurable due diligence standard or professional insurance | Mandatory due diligence standard, professional insurance, proportional liability |
| Temporal certainty | Article 32(2) GR 24/1997 (five-year rechtsverwerking) | Government regulation level; limited to certificate issuance | Elevated to statute; applicable to subsequent transfers |
| Data infrastructure | Ministerial Regulation ATR/BPN 3/2023 (electronic certificates) | Inadequate data quality and cybersecurity | Electronic notification to right holders; population data integration; hybrid approach |

*Source: Author's analysis of primary and secondary legal materials.*

To provide a concrete normative basis, this study formulates a proposed norm (*ius constituendum*) that may be included in a future land bill, as follows.

*(1) A purchaser of land rights who has carried out due diligence in accordance with the prescribed standard and obtained electronic proof of verification shall be deemed to be in good faith, unless proven otherwise.*

*(2) The annulment of a deed of transfer because the seller was not entitled or because of forgery shall not extinguish the right of a subsequent purchaser in good faith as referred to in paragraph (1) who has registered the right.*

*(3) A party who loses land rights by reason of paragraph (2), or by reason of errors in land registration data, shall be entitled to compensation from the Land Title Assurance Fund.*

*(4) The state, through the manager of the Land Title Assurance Fund, shall be subrogated to the position of the compensated party to claim against the party at fault, including a deed official who negligently failed to perform due diligence.*

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This formulation positions the protection of good faith purchasers not as an exception dependent on judicial discretion but as a normative right arising from the fulfilment of an objective standard. At the same time, the interests of the original owner remain protected through state compensation, so that disputes between two innocent parties are no longer resolved by "winner takes all" logic. This direction of reconstruction is in line with developments in global land administration that demand transparency, traceability, and public trust in the registration system (Ameyaw & de Vries, 2020).

Implementing the model requires stages. The first stage is refining technical regulations on due diligence standards and electronic notification at the ministerial regulation level. The second is establishing the assurance fund and compulsory PPAT professional insurance through a government regulation. The third is statutory regulation affirming the definition of the good faith purchaser, the taxonomy of defects, and the extension of *rechtsverwerking*. This gradual, hybrid approach is more realistic than abrupt change, as demonstrated by the application of technology in land administration across various jurisdictions (Bennett et al., 2021).

Beyond substance and structure, the success of the reconstruction depends on legal culture. Society must be encouraged to make due diligence a habit, while deed officials must internalize professional ethics that refuse to draw up deeds for transactions reasonably suspected of being problematic. Cultivating such legal culture forms part of professional responsibility and serves as a means of preventing the misuse of deeds in unlawful transactions (Moertiono & Lubis, 2025).

## CONCLUSION

Juridical defects in land AJBs originate from three categories, namely formal-administrative, subjective, and objective-absolute defects, in addition to defects originating from state registration data. Indonesian positive law and judicial practice have not differentiated the legal consequences of these categories, so good faith purchasers often bear the risk of defects they could not detect. The protection of good faith purchasers has not delivered certainty and justice owing to three structural deficits: a normative deficit (no statutory norm, and SEMAs do not bind across regimes), a differentiation deficit, and a compensation deficit. This condition is aggravated by a negative publication system that has not positioned the state as guarantor of the accuracy of its data (Suharyono, 2019).

This study reconstructs legal protection through the Verified Good Faith Layered Protection Model, consisting of five layers: the objectivation of good faith through a verified due diligence protocol; a three-tier taxonomy of defects with protection for subsequent purchasers; a Land Title Assurance Fund; proportional liability of the PPAT and the state; and stronger temporal certainty through elevation of the normative hierarchy. The model balances legal certainty for purchasers with justice for original owners, while seizing the momentum of the digital transformation of land registration, which demands adequate protection of registration data (Dharma et al., 2023). Further research is recommended to test the model empirically, particularly regarding the fiscal feasibility of the assurance fund and the readiness of land data infrastructure (Aditya et al., 2021).

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