



## **Ratio Decidendi of Jurisprudence Toward Good Faith Buyer That Objected the Land in The Perspective Of Pancasila Philosophy**

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### **Abstract**

Ratio decidendi is the reason for the decision of judge, as a legal reason and consideration that forms the basis of a judge's decision. The meaning of the perspective of the Pancasila Philosophy regarding the implementation of judicial power as the power of an independent state to administer justice in a general court environment in order to enforce law and justice based on Pancasila and the 1945's State Constitution of the Republic of Indonesia. In judicial practice, the determination of the buyer in good faith with a land object is very dependent on the judge examining and trying the case in question. The construction of the judge's decision to buyers in good faith with a land objects includes two contextual components, a legal reasoning and a law making. Context of legal reasoning is done by analogy, to concretize the principle of law in the provisions of a statutory regulation. Context of Law Making is based on the methods of interpretation.

### **Keywords**

ratio decidendi, verdict, buyer in good faith

### **Abstrak**

Ratio decidendi merupakan alasan dan pertimbangan hukum yang menjadi dasar putusan hakim. Makna perspektif Filsafat Pancasila tentang penyelenggaraan kekuasaan kehakiman sebagai kekuasaan negara yang merdeka untuk menyelenggarakan peradilan di lingkungan peradilan umum guna menegakkan hukum dan keadilan berdasarkan Pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Dalam praktik peradilan, penentuan pembeli beritikad baik berobjek tanah sangat tergantung kepada hakim yang memeriksa dan mengadili perkara yang bersangkutan. Konstruksi ratio deciendi putusan hakim terhadap pembeli beritikad baik berobjek tanah mencakup dua komponen kontekstual. Pertama, konteks penalaran hukum dan kedua, konteks penemuan hukum.

Konteks Penalaran Hukum dilakukan dengan cara analogi, untuk konkretisasi asas hukum dalam ketentuan suatu peraturan perundang-undangan. Konteks Penemuan Hukum dilakukan berdasarkan metode penafsiran atau interpretasi

### **Kata kunci**

ratio decidendi, putusan hakim, pembeli beritikad baik

### **Introduction**

The study of Pancasila is a paradigm of legal science as according to **Sudjito Atmoredjo** to be very important and needs to be strengthened based on arguments, including the paradigm is "a set of values about God, nature, and humans", the paradigm is the source, foundation, origin, and beginning of the existence and development of knowledge, and the Indonesian science paradigm is Pancasila. That is, obtaining legal knowledge and practicing legal science must pivot, process and lead to the values of Pancasila.

Along with the study of Pancasila as a paradigm of law, Indonesia as a Legal State (rechtstaat) according to the doctrine of "rule of law" or rechtstaat is not merely translated into "a state based on the rule of law" which, according to Budiono Kusumohamidjojo, seems most appropriate translated into "a state base on law".<sup>1</sup>

Philosophers had long developed the idea of the rule of law from Ancient Greece. According to Plato, as quoted by Philipus M. Hadjo, the rule of law is the second-best form to prevent a decline in power. Then in modern times, the concept of the rule of law was developed in Continental Europe using the German term rechtstaat. Whereas in the Anglo-American tradition, the concept of legal state was developed as "the Rule of Law" pioneered by AV. Dicey, as quoted by Jimly Assidique, added that the concept of the rule of law is associated with the term nomocracy (nomocratie), that the determinant in the administration of state power is law.<sup>2</sup>

In the context of Indonesia as a legal state (rechtstaat), the implementation of state power in the judicial field is called Judicial Power, namely the power of an independent state to administer justice to enforce law and justice based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the rule of law of Republic of Indonesia. Judicial power according to the 1945 Constitution of the Republic of Indonesia is an independent power exercised by a Supreme Court and the judicial body underneath it in the general court, religious court, military court, state administrative court, and by a Constitutional Court, to hold judiciary to uphold law and justice.

Based on the considerations and the provisions of Article 1 point number 1

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<sup>1</sup> Asip Suyadi, 'Pancasila as a Legal Development', *International Journal of Law and Public Policy*, 1.1 (2020), 1-7 <<https://doi.org/10.36079/lamintang.ijlapp-0101.84>>.

<sup>2</sup> Rocky Marbun, Abdul Hakim, and M. Adystia Sunggara, 'Legal Philosophy of Pancasila as The Paradigm of The Criminal Justice System: A Philosophical Criticism for the Loss of a Sense of Humanity', *SHS Web of Conferences*, 54 (2018), 07001 <<https://doi.org/10.1051/shsconf/20185407001>>.

of Law Number 48 of 2009 concerning Judicial Power, it was concluded that the administration of judicial power in Indonesia as the rule of law was carried out by the Supreme Court of the Republic of Indonesia (hereinafter abbreviated to the Supreme Court) and four judicial environments namely the judiciary general, religious court, state administrative court, and military court under the Supreme Court. Thus, the power of the judiciary to administer justice to uphold law and justice is exercised by a Supreme Court, and by a Constitutional Court.

In this paper, it is limited to the General Courts environment as referred to in Act 49 of 2009 concerning Amendment to Law Number 2 of 1986 concerning General Courts, which in Article 1 stipulates that the meaning of "Courts" is district courts and high courts in general justice environment (item number 1); and what is meant by "judge" is a judge in a district court and a judge in a high court (item number 2).

It is pointed in Law Number 49 of 2009 concerning Amendment to Law Number 2 of 1986 concerning General Judiciary, stipulates that judicial power is an independent power to administer justice in order to enforce law and justice so that it is necessary to create a clean and authoritative judicial institution in fulfilling a sense of justice in society.

In the context of the judiciary as a legal process, Satjipto Raharjo Distinguishes the meaning of "justice" and "court" that is "justice," referring to the process of hearing, while "court" is one of the institutions in the trial process. The final result of the trial process is a court decision, or the word "judge's decision" is often used because the judge presides over the trial.

What is meant by "judge" in this paper is a judge in a district court and a judge in a high court and a supreme court judge in the Supreme Court. Likewise, the meaning of "judge's decision" can be in the form of a district court decision and a high court decision that culminates in a decision of the Supreme Court, which contains the rule of law concerning legal protection for buyers in good intentions with land objects.

The phrase "ratio decidendi" of the judge's decision means "legal reasons and considerations which form the basis of the decision" by a judge who is well known in countries with a common law system tradition which Sidharta Stated that literally, the term "ratio decidendi" means "a reason to impose decision (the reason for the decision), and further Sidharta quotes Michael Zander's the opinion that the ratio decidendi is "A proposition of law which decides the case, in the light or the context of the material facts."

The meaning of the sub-title "in the perspective of the Pancasila Philosophy" concerning the implementation of judicial power as an independent state power to administer justice in the general court environment in order to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Sudjito Atmoredjo Mentions the position of Pancasila as the State Foundation and as the source of all sources of Indonesian law whereas the 1945 Constitution of the Republic of Indonesia has formulated a meaningful message in the form of the

Formulation of the State's Objectives and the State's Foundation which was formed in the composition of the Republic of the people with sovereignty based on Pancasila.

## **Result and Discussion**

### **Judicial Power and Pancasila Philosophy**

In exercising judicial power, a judge in a civil case is a judge who receives, examines and hears general civil dispute cases in the general court environment, namely the first tier in the district court, the appeal rate in the high court, and the supreme court judge in the Supreme Court.<sup>3</sup>

The purpose of the law, as referred to by Gustav Radbruch in Teguh Presetyo Covers justice, legal certainty, and expediency as a unitary balance, single or triune and imperative; but it must not be understood as having a separate meaning, it cannot be disputed or dichotomized and cannot be seen as an antinomie. Because all three are a reflection of the nature of the law itself, namely the balance as three legal characteristics conceptualized as the purpose of the law.<sup>4</sup>

For Indonesia, according to Notonagoro in Kaelan That the intended legal purpose must be related to the unity of the Pancasila precepts which is not only a formal logical entity in the hierarchical meaning in the form of a pyramid of broad sequences (quantity) which indicates an inherent meaning of meaning, but also see the essential unity of ontological, epistemological and axiological basis of the precepts of the Pancasila. Thus, Pancasila is an integrated philosophical system having an ontological basis, epistemological basis, and axiological basis, which is different from other philosophical systems, such as materialism, liberalism, pragmatism, communism, idealism, and other philosophical understandings in the world (Sumarwoto, 2021).

Furthermore, Sudjito Atmoredjo, said that there is a common thread that must not be broken between progressive law, substantive justice, and Pancasila values that must be understood in a whole and comprehensive manner with a holistic approach, and not a partialist approach.

### **Judge and Ratio Decidendi Decision of Civil Judge**

In this context, the Judge is the main actor in terms of a law enforcement process and in issuing decisions. As explained at the outset, that in exercising judicial and judicial authority in civil cases is the judge who receives, examines and hears general civil dispute cases in the general court environment, namely the first level in a district court, the appeal level in a high court, and the supreme court

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<sup>3</sup> Elsa Yulia Fitriyani, Alifia Nabila, and Masduki Asbari, 'Pancasila as a Paradigm Groundslas Phyloshopie', *Journal of Information System and Management*, 01.06 (2022), 43-46 <<https://jisma.org/index.php/jisma/article/view/192>>.

<sup>4</sup> Shinta Ayu Purnamawati and Sidik Sunaryo, 'Legal Politics of Pancasila Ideology against Radicalism in the State of Law Enforcement', *Jurnal Jurisprudence*, 11.2 (2022), 141-55 <<https://doi.org/10.23917/jurisprudence.v11i2.14742>>.

judge cassation in the Supreme Court.

In carrying out its functions, the judge renders a decision that must be based on the reasons and considerations of why he sentenced such a decision - known as the ratio decidendi. The meaning of the Ratio Decidendi is the reasons that are directly in a judge's decision or the reason for deciding, and legal considerations are the basis of a judge's or court's decision.

According to Satjipto Raharjo Legal protection is to protect human rights that are harmed by others, and that protection is given to the public so that they can enjoy all the rights granted by law. The law protects a person's interests by placing a power that is measured (sure and in-depth) to act in the framework of those interests (Sumkaew & Intanon, 2021).<sup>5</sup>

Sudikno Mertokusumo It is stated that the judge's decision as to the rule of law for the future and is a guideline for other judges to decide a case similar to that decided by a decision in the future (stare decisis). In using a case approach, what needs to be understood by the researcher is the ratio decidendi, which is the legal reason used by the judge to arrive at his decision. If the verdict is seen as stipulating the rule of law, then the binding is the consideration or reason directly on the subject matter; namely, the rule of law is the legal basis for the decision of the "ratio decidendi."

About legal discovery, Lili Rasjidi mentioning as concrete juridical decision-making activities which directly lead to legal consequences for an individual situation (judges' decisions, decrees, notary deed formation, etc.) Basically, legal discovery is a reflection of legal formation. Specifically, the discovery of law is the opposite. In the discovery of the law, it is the specific things that are raised, and at the same time, the impact of general validation is constrained. Lili Rasjidi describe the activities of legal discovery, the formation of law, and legal aid in the frame of legal development (rechtsbeoefening) practically, namely the validity of the law in a society that includes activities in forming, implementing, implementing, finding, interpreting, studying and teaching law.

### **Defining Buyers in Good Faith Buyer that Objected Land in Indonesian Judicial and Jurisprudence Practices**

According to R. Subekti, the buyer in good faith is a buyer who does not know at all that he is dealing with a person who is not really the owner, so he is seen as the owner and whoever gets an item from him is protected by law. While, Ridwan Khairandi formulating a buyer in good faith is someone who buys goods with full confidence that the seller is really the owner of the goods he sells. Another understanding, according to Agus Yudha Hernoko, buyers in good faith are honest people and do not know the defects attached to the goods bought.

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<sup>5</sup> David P. Duarsa and Dauri, 'Revitalization of Pancasila Values Against the Imposition of Substitution Money as an Additional Criminal in Corruption Crimes', *Proceedings of the Universitas Lampung International Conference on Social Sciences (ULICoSS 2021)*, 628.ULICoSS 2021 (2022), 272-81 <<https://doi.org/10.2991/assehr.k.220102.033>>.

The definition of good faith in the sphere of material rights (ownership rights) on movable objects or property, then based on the provisions of Article 531 of the Civil Code regulates the position of a person in good faith if the party obtaining the property rights is not aware of any hidden defects. In an agreement, protecting parties in good faith is needed by law, which can provide legal certainty protection, one of the ways is to submit civil lawsuits to the court.<sup>6</sup> Based on the search of the literature in literature studies, The sale and purchase of land under customary law are carried out with real, clear, and cash terms. The meaning of "real" is the will that is said must be followed by real actions, for example, the receipt of money by the seller and the agreement made before the Village Head. The meaning of "cash" is the transfer of rights by the seller carried out simultaneously with payment by the buyer, and ownership rights have immediately shifted. Whereas, the definition of "clear" buying and selling of land is carried out before the Head of Customary or Village Head who acts as an official who bears the regularity and legality of the transfer of land rights (plus witnessed by witnesses), so that the act of buying and selling land is known by the public .

### **Construction of Ratio Decidendi Jurisprudence according to the Supreme Court Jurisprudence regarding Legal Protection of Buyers in Good Objects with Land Objects**

The Supreme Court (MA) as the highest State court, which since 2011 implemented the Chamber System through the Decree of the Chief Justice of the Republic of Indonesia Number 142/KMA/SK/IX/2011, namely to impose a policy on the application of the chamber system to the Supreme Court. In the Supreme Court Room System, the Supreme Court judges are grouped into five chambers, namely the civil chamber, criminal chamber, religious chamber, state administration room, and military chamber. The Chief Justice of each room basically only hears cases that fall within the scope of the authority of each room. The Chief Justice of the Civil Chamber only hears civil cases, and the Chief Justice of the Criminal Chamber only hears criminal cases. Likewise, the supreme judge of the state administration chamber only hears the state administration case.<sup>7</sup>

Meanwhile, Chief Justice of Supreme Court M HattaAli emphasized that the room plenary meeting was aimed at strengthening the room system in handling cases in the Supreme Court. This room system has several main objectives, as follows are maintain unity in the application of the law, consistency of Supreme Court decisions, increase the professionalism of justices and speed up the settlement process.

The construction of the judge's decidendi ratio decision according to the MA jurisprudence on "legal protection of buyers in good intentions with land object" means how the reason building and consideration of judges in deciding on a case

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<sup>6</sup> Muhyar Fanani, 'Incompatibilities of Indonesian Constitution Amendments with the Philosophy of Pancasila', 2022 <<https://doi.org/10.4108/eai.15-9-2021.2315594>>.

<sup>7</sup> Mohammad Wahyu Adji Setio Budi, 'Indonesian State System Based on Pancasila and the 1945 Constitution: A Contemporary Developments', *Indonesian Journal of Pancasila and Global Constitutionalism*, 1.1 (2022), 1–16 <<https://doi.org/10.15294/ijpgc.v1i1.56875>>.

they handle, namely as a construction of the judge's *decidendi ratio* decision based on legal reasoning and legal discovery in determining the criteria of the buyer having a good intention to take the object of land as a legal standard through the Supreme Court jurisprudence and the Chamber System in the MA towards the unity of the application of the law and the consistency of the decision.

According to Ridwan Khairandy, when a judge hears a case, then the first thing that the judge needs to do is to correct whether or not the event that was presented to him is correct. After limiting the event, the judge must qualify the event. Then, the judge must be able to determine what law will be applied to resolve the dispute in question. So, here, the judge must find the law. Judges in Indonesia in finding law can refer to several sources of law, such as statutory regulations and jurisprudence. In Indonesia, judges are not bound by previous jurisprudence or decisions of judges on congruent cases. In this case, the court in Indonesia does not adhere to the principle of the binding force of precedent or *stare decisis*.

Ridwan Khairandy stressed that the negative impact of not adhering to this principle is that it is possible for court decisions to be inconsistent and can lead to legal uncertainty. On the other hand, the non-adoption of this principle also creates opportunities for judges or courts to establish new judicial laws that can follow the development of the community in its decisions.

The meaning of good faith in the context of Article 1338 paragraph (3) of the Civil Code by the Surabaya High Court is interpreted as honesty as in its decision Number 262/1951 Pdt on July 31, 1952, which Ridwan Khairandy gave a note, that the accuracy for the buyer to examine or examine (*onderzoekplicht*) material facts relating to the sale and purchase agreement. Good intentions are objective (*objective goeder trouw*) based on propriety and propriety (*redelijkheid en billijkheid*) as justice. Good faith is subjective (*subjective goer trouw*) based on honesty.<sup>8</sup>

The construction of the judge's decision ratio is based on the context of legal reasoning and the context of legal discovery in determining the criteria for buyers in good intentions of having land objects as legal standards through the jurisprudence of the Supreme Court and the Chamber System in the Supreme Court.

#### Context of Legal Reasoning

The context of legal reasoning with respect to a legal principle in the provisions of Article 10 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power, which determines that the Court is prohibited from refusing to examine, hear and decide on a case filed under the pretext that the law does not exist or is unclear, but rather obliged to examine and try it.

The legal principles in the Supreme Court Decision, which basically states

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<sup>8</sup> International Journal and Law Reconstruction Volume, 'THE LEGAL PHILOSOPHY AND JUSTICE VALUES IN THE ACQUISITION', 22.2 (2022), 278-98 <<https://doi.org/http://dx.doi.org/10.26532/ijlr.v6i2.26841>>.

that the buyer is not in good faith, so he does not get legal protection, are the decision of the Supreme Court Number 4340 K/PDT/1986 with the rule of law that good faith is considered to be non-existent because the buyer is deemed not to have done anything to examine the actual landowner and the object of sale and purchase, the decision of the Supreme Court Number 1816 K/PDT/1989 with the rule of law that good faith is considered to exist if the buyer examines the rights and status of the seller, the decision of the Supreme Court Number 1861 K/PDT/2005 with the rule of law that good faith is considered to be non-existent because the acquisition of rights (purchase) occurs when the seller is litigating with the owner (won in this case is the initial owner).<sup>9</sup>

Whereas the legal norms in several Supreme Court Decisions below which basically determine that buyers in good faith who get legal protection includes the decision of the Supreme Court Number 120 K/SIP/1957, that the plaintiff's claim cannot be accepted, on the grounds that the plaintiff allowed the matter for 25 years, must be considered to deprive them of their rights (*rechtsverwerking*), the decision of the Supreme Court Number 550 K/PDT/2013, that good faith is considered to exist because the buyer (1st) can show proof of ownership, while the 2nd buyer does not, the decision of the Supreme Court Number 1778 K/PDT/2013, that good faith is deemed to exist, due to evidence of the sale and purchase receipts recognized by both parties. The panel of judges stated that the buyer in good faith was protected because it was clear that there was evidence of receipt of money that was acknowledged by both parties.<sup>10</sup>

### **Closing**

Based on the discussion, as mentioned above, conclusions can be drawn as the meaning of legal protection for buyers in good intentions to objectify land in the legal context of buying and selling is not regulated in Indonesian laws and regulations and is only known in the legal literature through the opinion of legal experts or doctrines. In judicial practice in Indonesia, legal protection for buyers in good intentions with the object of land grows and develops through jurisprudence, so that the form of legal protection is left entirely to the judge to determine the criteria for buyers of good intentions with the object of land. The construction of the *ratio decidendi* according to the jurisprudence of the Supreme Court to buyers of good intentions with an object of land includes two contextual components, namely the context of legal reasoning and the context of legal discovery (*rechtsvinding*). The context of legal reasoning is done by analogy, to concretize the legal principle in the provisions of Article 10 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power, which determines that the Court is prohibited from

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<sup>9</sup> D N Kusumaningrum and ..., 'The Internalization of Nationalism and Pancasila for Teenager as the Value to Living in the Era of Digital Transformation', *Journal of Community ...*, 3.2 (2022), 77-87 <<https://doi.org/https://doi.org/10.22219/jcse.v3i2.20595>>.

<sup>10</sup> Yakob Noho Nani, 'The New Public Actor: A Philosophical Approach to Changing the Paradigm of Public Administration (Pancasila Administration Perspective)', *European Journal of Science, Innovation and Technology*, 2.2 (2022), 16-31 <[www.ejsit-journal.com](http://www.ejsit-journal.com)>.



refusing to examine, hear, and decide on a case submitted under the pretext that the law is absent or unclear, but rather obliged to examine and try it. The reasoning of the law by analogy has an important meaning as the ratio decidendi of the judge's decision to answer and explain (whether) the meaning of the buyer of good faith in the subject of land protected by law in judicial practice in Indonesia through the jurisprudence of the Supreme Court. The context of legal discovery (rechtsvinding) is done by means of the method of interpretation, for the concretization of the legal principle in the provisions of Article 5 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power, which determines that: Judges and Constitutional Justices must explore, follow, and understand the legal values and sense of justice that lives in society. The legal finding based on the method of interpretation or interpretation has an important meaning as a ratio decidendi of the judge's decision to answer and explain about (how) the criteria of buyers in good intentions to object to land protected by law in court practice in Indonesia through Supreme Court jurisprudence.

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