

# Civil Law Analysis of Default in Land Sale and Purchase Agreements

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## ABSTRACT

This study examines the issue of default in land sale and purchase agreements in Indonesia, focusing on the characteristics of default, effective and fair dispute resolution mechanisms, and the role of the principle of good faith in preventing and handling them. The method used is normative juridical with a literature review of the Civil Code, the Basic Agrarian Law, and related court decisions. The results show that default can take the form of various types of contract violations that have serious legal implications such as cancellation of the agreement and demands for compensation. Dispute resolution mechanisms include litigation and alternative channels such as mediation and arbitration that can improve efficiency and fairness. The principle of good faith is the main foundation in the implementation of agreements and dispute resolution to create trust and legal certainty. The study recommends strengthening regulations, legal education, and the development of alternative mechanisms to strengthen legal protection in land sale and purchase transactions in Indonesia.

**Keywords:** Default, Land Sale and Purchase, Good Faith, Dispute Resolution, Civil Law.

## INTRODUCTION

Land purchase and sale agreements are a vital form of civil law contract in Indonesian society. Land, as an object of sale and purchase, not only possesses high economic value but also holds significant social and cultural significance and is a strategic asset for national development (Sumardjono, 2009). However, in practice, land purchase and sale agreements often encounter obstacles in the form of default, namely the inability or failure of one party to fulfill its obligations as agreed in the contract (Hasanah & Hidayat, 2021).

Default in land sales can take the form of delayed payments, failure to hand over the land object, or abuse of agreed rights, which result in both material and immaterial losses and legal uncertainty for the parties (Ejournal.stih-awanglong.ac.id, 2025). For example, in the case of default in the Surabaya District Court Decision Number 347/Pdt.G/2022/PN SBY, the plaintiff who had paid in full to purchase a plot of land did not receive physical delivery of the land, resulting in a dispute and lawsuit for cancellation of the agreement and compensation (ILSLawfirm.co.id, 2024). This case illustrates the complexity of resolving defaults that involve not only contractual aspects but also administrative land aspects.

The problem of default is exacerbated by the parties' lack of understanding of applicable land and contract law regulations, as well as frequent non-transparent transaction processes. Inconsistencies in land administration and weak law enforcement have led to an increase in land sale and purchase disputes, negatively impacting legal certainty and social order (Sembiring, 2019; DinastiRev.org, 2025). This situation requires an in-depth study to analyze the legal aspects of default, including an evaluation of legal mechanisms for fair, prompt, and appropriate dispute resolution.

The importance of land as a unique and valuable object of sale and purchase requires special attention in the implementation of land sale and purchase agreements to prevent maladministration and protracted legal violations. This study seeks to contribute by comprehensively examining the characteristics of default, the most common forms of default, and available legal resolution methods, including the role of the courts in handling default disputes (Putri, 2021). Furthermore, this study aims to provide policy recommendations that can improve legal protection and certainty in land sale and purchase transactions.

Based on the background described previously, the problems to be studied in this paper can be formulated as follows: 1) What are the characteristics and forms of default that occur in land sale and purchase agreements according to civil law in Indonesia? 2) What is the effective and fair mechanism for resolving default disputes in land sale and purchase agreements? 3) What is the role of good faith in preventing and handling defaults in land sale and purchase agreements in Indonesia based on civil law provisions and court practice?

The objectives of this research are: 1) To comprehensively analyze the legal aspects of default in land sale and purchase agreements. 2) To evaluate the mechanisms and efforts to resolve default disputes to provide optimal legal protection for the parties. 3) To analyze the role and application of the principle of good faith in preventing default and in resolving default disputes in land sale and purchase agreements, both from the perspective of civil law and judicial practice in Indonesia.

## **METHODS**

This study uses a normative juridical legal research method appropriate for analyzing legal provisions and their application regarding default in land purchase agreements in Indonesia. The primary legal sources focused on the study include:

1. The Civil Code (KUHPerdata), especially Article 1238 concerning default, Article 1243 concerning compensation due to default, and Article 1320 concerning the valid conditions of an agreement.
2. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) which regulates land rights.
3. Legal literature in the form of books, journals, legal articles, and relevant published academic documents, such as Hasanah & Hidayat (2021), Hukumonline.com (2024), and ILSLawfirm.co.id (2024).

The approaches used include:

1. Statute approach to examine and interpret applicable legal norms.
2. A conceptual approach to examining the concept and theory of default law in contracts.
3. An empirical juridical approach can be complemented to understand how the law is applied in practice through case studies of court decisions.

The data collection technique is library research by collecting and filtering legal documents, court decisions, scientific works, and related references available in libraries, legal journal databases, and official websites of judicial and government institutions.

Data analysis was carried out qualitatively using content analysis techniques which focused on understanding, interpreting and synthesizing the contents of documents according to applicable legal theories and norms.

This normative juridical method enables research to produce structured, in-depth, and applicable legal studies in order to provide recommendations for legal solutions to overcome defaults in land sale and purchase agreements.

## **RESULTS AND DISCUSSION**

## **Characteristics and Forms of Default that Occur in Land Sale and Purchase Agreements According to Civil Law in Indonesia.**

Default in the context of a land sale and purchase agreement is a form of failure or breach of promise by one party to fulfill its obligations in accordance with the provisions of the agreement. In Indonesian civil law, default is regulated in Article 1238 and Article 1243 of the Civil Code (KUHPerduta), which states that a debtor is declared in default if he fails to fulfill his obligations within the specified time and manner or after receiving a warning (summons) from the creditor (Hukumonline.com, 2024). According to Hasanah and Hidayat (2021), default not only takes the form of failure to pay or deliver the object of the sale and purchase, but also includes administrative negligence that hinders the land sale and purchase process.

One important characteristic of default is its variety of forms, which can occur in various modes. For example, a seller may default by failing to hand over the land certificate for the object of the transaction even though payment has been received in full. Similarly, a buyer may default by failing to make payments on time or within the agreed amount (DinastiRev.org, 2025). Furthermore, administrative and legal factors in land matters, such as delays in the title transfer process, can also be classified as default, complicating the parties and giving rise to disputes (Putri, 2021).

The characteristics of a breach of contract in a land sale and purchase agreement have serious legal implications. A breach of contract can result in the cancellation of the agreement and a claim for compensation for the losses suffered by the aggrieved party. Article 1243 of the Civil Code stipulates that the aggrieved party is entitled to compensation for costs, losses, and interest resulting from the breach of contract. Court decisions, such as Surabaya District Court Decision No. 347/Pdt.G/2022/PN SBY, explain that a buyer's default in paying the land price results in the cancellation and reintegration of ownership rights to the seller (ILSLawfirm.co.id, 2024).

Cases of default also frequently occur due to an imbalance of information and a lack of legal education among land buyers and sellers. Sumardjono (2009) warns that legal ignorance creates the risk of default, which is exacerbated by non-transparent transaction processes and minimal legal protection for buyers. This requires increased legal understanding and preventative measures through the drafting of clear agreements and supervision by land deed officials (PPAT).

The social and economic impacts of default cannot be ignored. Disputes arising from defaults in land sales can hamper development, disrupt social stability, and cause economic losses at the local and national levels (Sembiring, 2019). Handling defaults must consider both legal and social aspects to achieve a just and sustainable resolution.

In legal practice, default resolution often involves mediation and out-of-court negotiations to expedite resolution and avoid high costs. However, if mediation fails, civil litigation becomes a last resort. Effective law enforcement is crucial for ensuring transaction certainty and protecting rights (DinastiRev.org, 2025).

In addition to legal aspects, the need for regulatory reform is also emphasized given the complexity of land disputes involving customary law, national land law, and overlapping administrative aspects. Policy synergy and regulatory harmonization are expected to minimize the potential for future defaults (Lestari, 2024).

Based on this analysis, it can be concluded that default in land sale and purchase agreements is a multidimensional issue that requires a comprehensive legal approach. A good understanding of the characteristics and forms of default, as well as the means to resolve them, is key to achieving legal certainty and justice for all parties involved in land sale and purchase transactions in Indonesia.

### **Effective and Fair Dispute Resolution Mechanism for Default in Land Sale and Purchase Agreements.**

Resolving disputes arising from breach of contract in land sale and purchase agreements is a crucial process for maintaining justice and legal certainty in the agrarian sector. An effective and fair dispute resolution mechanism must accommodate the protection of the rights of both parties and expedite the resolution process to avoid exacerbating social and economic burdens. In practice, in Indonesia, disputes arising from breach of contract can be resolved through several mechanisms, including litigation, such as judicial proceedings, and non-litigation, such as mediation and arbitration (Neliti.com, 2023; Vaustine, 2024).

Formal litigation is generally conducted in the District Court within the jurisdiction where the land is located. This process involves filing a lawsuit, presenting evidence, examining witnesses and evidence, and issuing a judge's decision, which is binding on all parties. Court decisions provide binding and final legal certainty, particularly when referring to Articles 1238 and 1243 of the Civil Code, which regulate breach of contract and compensation. However,

this procedure is relatively lengthy and costly, often placing a burden on the parties involved in the dispute (Prakoso, 2020; Purwanti, 2024).

Alternative dispute resolution mechanisms such as mediation are increasingly being developed as a solution to resolve defaults quickly and efficiently. Mediation allows parties to meet in a conducive forum, mediated by a neutral third party, to reach a mutual agreement. The advantages of mediation lie in its voluntary, confidential, and non-formally binding nature, thus maintaining good relations between the parties and reducing the burden on the courts (Supreme Court Regulation No. 1 of 2008).

Besides mediation, arbitration is also an option, especially when the parties already have an arbitration clause in the sales and purchase agreement. Arbitration is more formal than mediation and produces a binding decision, yet remains faster than court proceedings (Appihi.or.id, 2025). Arbitration provides legal certainty and allows for relatively cost-effective dispute resolution.

Ensuring public accessibility to dispute resolution mechanisms is a critical challenge. Legal education efforts, easy access to information, and the active role of dispute resolution institutions are essential to enable the public to choose the mechanism most appropriate to their circumstances. Responsive and transparent services will increase the utilization of mediation and arbitration, thereby reducing pressure on the courts (Sembiring, 2019).

Regulatory strengthening is also needed to encourage the use of alternative dispute resolution mechanisms. For example, government and Supreme Court policies encouraging mandatory mediation before cases are brought to court have shown positive results in reducing the number of ongoing disputes (DinastiRev.org, 2025). Furthermore, the role of Land Deed Officials (PPAT) is vital in overseeing sales and purchase transactions to ensure they meet legal requirements, thereby reducing the risk of default from the outset (Lestari, 2024).

Simultaneously, the dispute resolution mechanism for breach of contract must also be accompanied by preventative legal protections, such as clear and complete agreements, authentic deeds, and the involvement of a notary or Land Deed Official (PPAT) to oversee legal compliance throughout the transaction. This can minimize the risk of disputes and strengthen the protection of the parties' rights (Hasanah & Hidayat, 2021).

Peaceful mechanisms through informal negotiations also play a crucial role, particularly in indigenous or local communities, where local wisdom is often used to reach consensus in

resolving disputes. This approach supports the sustainability of social relations and prevents conflict escalation (Sumardjono, 2009).

The implementation of an effective and fair dispute resolution mechanism should be based on the principles of justice, transparency, and ease of access. This aligns with the objectives of civil law, which is to ensure legal certainty and fairness in land purchase and sale transactions. Therefore, the dispute resolution system must be able to provide satisfactory solutions for all parties, including those with limited legal knowledge (Putri, 2021).

An effective and fair dispute resolution mechanism for breach of contract in land sale and purchase agreements combines formal and informal channels tailored to the characteristics of the dispute and the needs of the parties. This comprehensive settlement regime will maintain legal order in the land sector while advancing justice for the Indonesian people.

### **The Role of Good Faith in Preventing and Handling Default in Land Sale and Purchase Agreements in Indonesia Based on Civil Law Provisions and Court Practices.**

Good faith is a fundamental principle in Indonesian civil law that governs contractual relations between parties. This principle is explicitly regulated in Article 1338 paragraph (3) of the Civil Code (KUHPerdata), which states: "Agreements must be executed in good faith." This article emphasizes that the implementation of contracts, including land sale and purchase agreements, must be carried out with sincerity, honesty, and moral responsibility from each party without violating the norms of justice and propriety (Kamal Wafda & Setyowati, 2022; Hukumonline.com, 2024).

In land transactions, good faith plays a crucial role as a primary deterrent to default. Parties entering into an agreement in good faith will strive to fulfill their obligations as promised, be transparent, and avoid seeking loopholes to avoid their responsibilities. This good faith applies not only to the contract implementation stage, but also to the pre-contractual (negotiation) and post-contractual (dispute resolution) stages, thus providing a binding moral and legal basis (Jenie, 2007; Sembiring, 2019).

Indonesian court practice also places good faith as a benchmark in adjudicating breach of contract. Breach of contract cases brought to court are often assessed based on the parties' good faith, particularly whether the breach was intentional or purely due to specific circumstances. Supreme Court and District Court rulings state that bad faith can result in the cancellation of

an agreement or a heavier claim for damages, in accordance with Article 1338 of the Civil Code (Supreme Court Decision No. 687 PK/Pdt/2016; Kamal Wafda & Setyowati, 2022).

The concept of good faith in Indonesian civil law is also influenced by the teachings of Roman law, known as *bona fides*, which refers to trust and honor in contracts. This principle has become a universal principle requiring all parties to act fairly and not abuse their rights in legal relationships (Jenie, 2007; Putri, 2021). Failure to adhere to the principle of good faith can result in serious legal consequences, including material and immaterial losses that must be compensated by the defaulting party.

Besides being a moral norm, good faith is also practical in regulating flexible and dynamic contractual relationships. This allows parties to adapt their obligations to circumstances and mutual interests, provided they do not substantially harm the other party. In cases of breach of contract disputes, the application of the principle of good faith opens up opportunities for resolution through mediation and negotiation, thus encouraging peaceful and just resolutions (Supreme Court Regulation No. 1 of 2008; Vaustine, 2024).

Philosophically and legally, good faith is the foundation of healthy and sustainable contract governance. In land purchase agreements, good faith requires the parties to maintain openness, communication, and accountability to minimize the risk of default from the initial contract formation through its implementation (Sumardjono, 2009; Hasanah & Hidayat, 2021). Thus, good faith not only prevents disputes but also strengthens trust and the stability of business relationships.

In practice, a lack of good faith is often the root of default in land sales, characterized by manipulative behavior, concealment of facts, and disregard for the rights of others. Courts often use the principle of good faith to assess the parties' behavior and make fair decisions, particularly in cases of land sale and purchase agreement disputes and payment defaults (Lestari, 2024; Ejournal.stih-awanglong.ac.id, 2025).

To ensure the effectiveness of the principle of good faith, legal education and public awareness campaigns, consistent law enforcement, and regulatory improvements are needed to ensure that every land sale and purchase agreement meets good faith standards from the very beginning (Kamal Wafda & Setyowati, 2022; Lestari, 2024). This also fosters a legal culture that places good faith as the primary foundation of transactions.

The role of good faith in land purchase agreements in Indonesia is crucial, both as an element to prevent default and as a basis for fair dispute resolution in court. Proper implementation will provide legal certainty, protect the rights of the parties, and strengthen the integrity of the Indonesian civil law system.

## **CONCLUSION**

- a. Default in a land sale and purchase agreement is a complex legal phenomenon with various forms, ranging from failure to fulfill obligations to implementation that does not comply with the agreement.
- b. The principle of good faith, as regulated in Article 1338 paragraph (3) of the Civil Code, plays an important role in preventing default and is the basis for resolving disputes fairly.
- c. Effective dispute resolution mechanisms include formal litigation channels in court as well as non-litigation channels such as mediation and arbitration which are faster and more cost-effective.
- d. The application of good faith encourages transparency, honesty and responsibility of the parties in implementing land sale and purchase agreements.
- e. Protracted default disputes can hamper development and cause socio-economic losses, so a comprehensive resolution approach is needed.
- f. Preventive legal protection through education, strengthening regulations, and the role of PPAT is very important to reduce the risk of default.
- g. A comprehensive dispute resolution system needs to combine formal legal aspects and alternative solutions that emphasize the principles of justice and ease of access.

## **SUGGESTION**

- a. Strengthening regulations and supervision of land sale and purchase transactions to ensure they comply with the principles of good faith and applicable legal provisions.
- b. Increase education and outreach regarding legal obligations and good faith to the community, especially those involved in land transactions.
- c. Encourage the use of alternative dispute resolution methods such as mediation and arbitration as the primary solution in resolving defaults.

- d. Strengthening the capacity of judicial institutions and optimizing the role of PPAT in overseeing the legality of land transactions.
- e. Conduct further research to evaluate the implementation of the principle of good faith and the effectiveness of dispute resolution mechanisms at the practice level.

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