

The Legal Protection on Notary in Dispute of Land Sales & Purchase Disputes

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Abstract. *This study aims to determine and analyze legal protection for Notaries in land sales and purchase disputes in Bengkulu based on Decision Number: 29/Pdt.G/2018/PN.Bgl. The research method uses a normative juridical approach and the specifications used are descriptive analytical, data collection uses a literature study. This study also uses qualitative data analysis techniques. The results of the study indicate that legal protection for Notaries in land sales and purchase disputes in Bengkulu based on Decision Number: 29/Pdt.G/2018/PN.Bgl shows that legal protection for Notaries in land sales and purchase disputes can be realized based on Article 15 paragraph (1) and Article 16 paragraph (1) letter a UUJN-P. These two norms provide legal protection to notaries from the aspect of authority regarding the issuance of authentic deeds and how their positions must be carried out. On the other hand, due to the sale and purchase not proceeding as stated in Article 1457 of the Civil Code, the obligation for the Notary to return it to the Plaintiff must have a strong legal basis. A very adequate legal basis is through a court decision ordering the Notary to return it to the Plaintiff. Meanwhile, from the aspect of public services, the issuance of the Sale and Purchase Deed Number 75 for the purposes of the plaintiff and the defendant and not submitting the plaintiff's certificate carried out by the Notary is an act protected by law based on Public Service Law.*

Keywords: Co-defendant; Dispute; Protection; Public.

1. Introduction

A notarial deed has very strong evidentiary power in a dispute in court as long as the untruth cannot be proven. This is because the legal requirements are formal

and cumulative.¹ A Notary Deed that is done carefully will close the gap to be questioned. This is understandable because the Notary and his client protect each other² deeds that do not cause multiple interpretations will provide legal certainty for the holder. By understanding this, the better the quality of the deed issued by a Notary, indicating that the person concerned is very professional in his field. On the other hand, an unqualified deed will not infrequently attract the Notary concerned into a legal dispute. At least the person concerned will be withdrawn as a co-defendant in a civil dispute regarding the deed he issued.

An incident of buying and selling land occurred in Bengkulu City, Bengkulu Province in 2015. The parties have bound themselves in a deed with number 75 drawn up before a local notary. In fact, the land sale and purchase agreement was not able to reduce the dispute between the parties so that it was resolved by litigation. The decision of the Bengkulu high court as an appellate court has handed down a decision Number 11/PDT/2019/PT BGL.

Case Number 11/PDT/2019/PT BGL in it states that there is a land sale and purchase transaction involving a notary. As is known, the task of a notary is to make a deed, to store it and to publish a grosse, to make copies and summaries of it. The notary only checks what happens and what is seen in it and records it in the deed based on Article 1 of the Notary Position Regulation S.1860 Number 3. On the other hand, in a land sale and purchase transaction, the position of the notary who makes the sale and purchase deed is as the Land Deed Making Officer (PPAT). Of course, the issuance of the deed of sale and purchase of land by a Notary as PPAT because the buying and selling process that occurs has fulfilled the selling and buying elements as required.

The legal position of a Notary as a co-defendant in case Number 11/PDT/2019/PT BGL is certainly not singular. The involvement concerned is a legal consequence of disputes arising from disputes between the seller and the buyer of the land. Of course, the notary has a connection with the case is meant if the land sale and purchase agreement which is now a legal dispute is the deed issued by the Notary concerned.

The new legal implications will occur when the facts of the trial above prove that the deed which is part of the evidence is legally flawed. The minutes of the trial which recorded the fact were evidence that had to be disclosed so that the case

¹Suato, E., & Gunarto, G. (2022). *The Legal Protection for Notary Employees who are Instrumental Witnesses in Notary Deed*, in Sultan Agung Notary Law Review, Vol. 4, No.1, URL. <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/20498>, p.1.

²Permatasari, A., Gunarto, G., & Handoko, W. (2021). *Responsibility of PPAT for Differences in Transaction Value with Written Price*, in Sultan Agung Notary Law Review, Vol.3.No.3, URL. <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/16309>

would be clear. By itself, the relationship between the deed and the notary as the producer of the deed could not be separated.

Observing the appeal case heard by the Bengkulu High Court Number 11/PDT/2019/PT BGL, where the object is the sale and purchase of land. One of the parties who is a defendant in this case is a Notary in Bengkulu. Purchase Number: 75 which is the object of dispute in the case Number 11/PDT/2019/PT BGL. As a legal issue, it becomes interesting to study.

2. Research Methods

This research approach used a normative juridical approach which was based on legal materials. The specification used in this research was descriptive analytical. The data collection method used in this research was literature study, a technique for obtaining secondary data through documents related to the problem, objectives and benefits of the research.

3. Results and Discussion

Legal protection for notaries in land sale and purchase disputes in Bengkulu based on decision Number: 29/Pdt.G/2018/PN.Bgl, must be reviewed according to Act No. 30 of 2004 concerning Notary Positions in conjunction with Act No. 2 of 2014 concerning Amendment to Act No. 30 of 2004 concerning the Position of a Notary, hereinafter referred to as UUJN jo. UUJN-P. These two legal instruments are the legal basis for Notaries to carry out their daily professions. It is known that in the decision Number: 29/Pdt.G/2018/PN.Bgl, that a notary in Bengkulu who was involved in the dispute over the sale and purchase of land was not a person invitation that regulates agrarian matters.

Notaries in exercising their authority must comply with UUJN jo. UUJN-P. Based on the attribution authority, it shows one of the legal protections for Notaries. Legal problems then occurred after the sale and purchase agreement Number: 75 issued by Notary Rizfitriani Alamsyah, SH and the plaintiff withdrew him as a Co-Defendant in the dispute which was decided based on decision Number: 29/Pdt.G/2018/PN.Bgl.

Legal protection available in UUJN jo. The UUJN-P against the Notary in Bengkulu, as a Co-Defendant, can be analyzed through the deed of sale and purchase agreement Number: 75 which has fulfilled both formal and material requirements. If it has fulfilled the formal and material requirements, then it is in accordance with the instructions in Article 15 paragraph (1), namely:

“Notaries are authorized to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or

desired by interested parties to be stated in authentic Deeds, guarantee certainty of the date of making the Deed, keep the Deed, provide grosse, copies and quotations. Deeds, all of which as long as the deed is made are not assigned or excluded to other officials or other people stipulated by law."

The provisions of Article 15 paragraph (1) above in terms of legal certainty are part of objective guidelines that must be complied with. Compliance collectively implies that the law applies equally to one another. Because it is not an ambiguous matter due to the same applicable law, this signifies legal certainty. Meanwhile, from the aspect of legal protection, Article 15 paragraph (1) above is a form of the presence of a legal state where all citizens receive legal protection. The norm requires that the authentic deed must be made by a competent person so that the deed product is produced according to the expected standard. People who take legal actions and require written evidence, use the services of a notary, because they are professional.

In the text of Decision Number: 11/PDT/2019/PT BGL in conjunction with Decision Number: 29/Pdt.G/2018/PN.Bgl., there were no objections or objections from the parties, either the defendant or the plaintiff after the issuance of the Deed of Sale and Purchase Agreement Number: 75. Without any objection or rebuttal from the parties, it means that the Deed of Sale and Purchase Agreement Number: 75, still has legal force, both formal and material. Thus, the issuance of the Deed of Sale and Purchase Agreement Number: 75 by a Notary as a Co-Defendant has been in accordance with Article 15 paragraph (1) UUJN-P. Consequently, the existence of Article 15 paragraph (1) will provide legal protection for the competence of the Notary because there is no unlawful act.

The plaintiff's reason (*posita/fundamentum petendi*) stated in point 9 states:

"That the Plaintiff and his proxies have also asked the Notary/Co-Defendant who holds the Plaintiff's land certificate to be returned to the Plaintiff, but the Notary/Co-Defendant is not willing to return it on the grounds that he will give it to the Plaintiff if there is a court decision ordering the Notary/Co-Defendant to give to the Plaintiff."

The reason that the Notary does not want to give the certificate as described above must be seen as the Notary's obligation to not take sides and protect the interests of the parties involved in legal actions as stipulated in Article 16 paragraph (1) letter a UUJN-P which states:

"In carrying out his position, a Notary is obliged to act trustworthy, honest, thorough, independent, impartial, and protect the interests of related parties in legal actions"

The Notary or Co-Defendant holding the land certificate belonging to the Plaintiff is not a unilateral act but based on the agreement of the Plaintiff and the Defendant before a legal dispute occurs. A unilateral request by the Plaintiff without the defendant's agreement is certainly difficult to fulfill. The certificate is held by a Notary because it is based on an agreement so that the refusal of the plaintiff's request is in order to protect the interests of the Defendant as a related party in the process of issuing the Deed of Sale and Purchase Agreement Number: 75 as a legal act. As a legal act, it does not only provide legal certainty but also legal protection. ³

The form of Notary compliance with Article 16 paragraph (1) letter a of the UUJN-P above is to avoid legal disputes with the defendant who feels aggrieved if the Sale and Purchase Agreement Deed Number: 75 is submitted to the plaintiff. On the other hand, the existence of Article 16 paragraph (1) letter a UUJN-P is a form of legal protection for a notary for his act of refusing the plaintiff's request. The behavior of the notary signifies the presence of legal certainty because human behavior, either individually or collectively, becomes subject and bound as what has been determined by law. Likewise, in the case of a notary making a will, it is also subject to the laws and regulations.⁴

Based on the description above, the refusal to submit the plaintiff's certificate by a Notary indicates that he has carried out his position in accordance with the laws and regulations. There is no reason for the Notary to submit the certificate under his control based on the agreement of the plaintiff and the defendant when the Deed of Sale and Purchase Agreement Number: 75 is issued. Because he has carried out his position like that, the Notary's actions receive legal protection as stated in Article 16 paragraph (1) letter e UUJN-P:, which states:

"In carrying out his position, a Notary is obliged to provide services in accordance with the provisions of this law, unless there is a reason to refuse it."

Everything described above shows that legal protection for a notary in a land sale and purchase dispute in Bengkulu based on decision number: 29/Pdt.G/2018/PN.Bgl, can be realized based on Article 15 paragraph (1) and Article 16 paragraph (1) letter a UUJN-P. These two norms provide legal protection to notaries from the aspect of authority regarding the issuance of authentic deeds and how their positions must be carried out. Not surprisingly,

³Arifin, H. (2021). *Legal Protection for Parties in Making Authentic Deeds from Legal Deviations by Notaries*, in Sultan Agung Notary Law Review, Vol. 3, No.3, URL. <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/16461>, p. 803.

⁴Nurani, M. S., & Hasana, D. (2021). *Roles & Responsibilities of Notaries Regarding the Deed of Will which is Made In front of Notary*, in Jurnal Konstatering, Vol. 1, No.1, URL. <http://jurnal.unissula.ac.id/index.php/jk/article/view/19185>, p. 188.

notaries are highly respected and their advice can be relied on in the community.⁵

Article 1457 of the Civil Code, hereinafter referred to as the Civil Code, has provided the understanding that:

"Buying and selling is an agreement whereby one party binds himself to deliver an object, and the other party pays the promised price."

The legal dispute between the plaintiff and the defendant that occurred as stated in Decision Number: 11/PDT/2019/PT BGL in conjunction with Decision Number: 29/Pdt.G/2018/PN.Bgl., was motivated by the existence of a sale and purchase agreement, which was then stated in the deed sale and purchase agreement number: 75 made before a notary. Furthermore, the lawsuit prepared by the plaintiff addressed to the defendant also attracted a notary, as a co-defendant. On the other hand, as an anticipation, a notary also needs to get legal protection against a lawsuit in court.⁶

The action of the Notary as a Co-Defendant who does not submit the plaintiff's certificate as stated in the plaintiff's reasons (*posita/fundamentum petendi*) listed in point 9 of the lawsuit file can be protected by law, meaning that from the 1457 aspect of the Civil Code it can be justified. The defendant who does not pay off according to the agreed price and time in the sale and purchase of land to the Plaintiff indicates a breach of contract. Even though the default is an act of the defendant, it does not mean that the certificate must be returned to the plaintiff. Different meaning that the defendant does not pay off the sale and purchase of land, the certificate is returned to the plaintiff. The legal action that occurred did not fulfill what is meant by buying and selling according to 1457 of the Civil Code because there was no "payment according to the agreed price" because the defendant had only paid part of the payment to the plaintiff. In line with that, the sale and purchase between the plaintiff and the defendant is not in accordance with the meaning of buying and selling as stated in 1457 of the Civil Code. Thus the action in question, as a co-defendant, who does not submit the plaintiff's certificate is an act that is protected by law indirectly as a result of an unauthorized sale and purchase.

⁵Amalia, D. P., & Widayati, W. (2021). *Juridical Analysis of Notary Responsibilities in the Deed Made When His Term of Office Ends (Retirement) Judging*, in Jurnal Konstatering, Vol.1, No.1, URL. <http://jurnal.unissula.ac.id/index.php/jk/article/view/19182>, p. 159.

⁶Adjie, H. (2021). *Inclusion of a Notary Public Protection Clause in the Deed of Parties, Legalization, Waarmerking, Adjustment and Matching of Copies with the Original and Kovernot*. Dalam Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences, Vol. 4 No.2, URL. <https://www.bircu-journal.com/index.php/birci/article/view/2008>

Withdrawing a notary in a dispute as a co-defendant is one aspect of legal certainty regarding the dispute itself. Not involving the defendant in a civil dispute will result in a lack of parties or a plurium litis consortium which is legally unacceptable or *Niet Ontvankelijke Verklaard* (NO). The lawsuit cannot be accepted or NO means that substantially (materially) the case has not been resolved because only the procedural (formal) aspect has been resolved. Thus, materially the case does not have legal certainty because it has not been resolved.

Article 1457 of the Civil Code is a norm that must be obeyed as a form of legal certainty. The Notary concerned, as a Co-Defendant, who does not submit the plaintiff's certificate is an act that implements Article 1457 of the Civil Code which must be obeyed. Notaries are not bound by defaults made by the parties because the deed of sale and purchase is an implementation of Article 1457 of the Civil Code. When the application is not in accordance with Article 1457 of the Civil Code, the notary must have an adequate legal basis to submit the plaintiff's certificate as another form of legal certainty.⁷

As a result of the sale and purchase not proceeding as stated in Article 1457 of the Civil Code, the obligation for the Notary to return it to the Plaintiff must have a strong legal basis. A very adequate legal basis is through a court decision ordering the Notary to return it to the Plaintiff.

Article 1 point 1 UUJN-P confirms that a Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. Meanwhile in the Netherlands, a Notary as a profession is bound by the confidentiality clause of the parties interested.

The consequence of a notary as a public official is that in carrying out this position he is in contact with public services.

Notary office in which it is managed by a public official who has the authority to use the Garuda Pancasila state symbol as a stamp in every deed he signs is a public service provider institution. This is in accordance with Article 1 paragraph (2) of the Act No. 25 of 2009 concerning Public Services, hereinafter referred to as the Law on Public Services, where it is stated that:

"Public service providers, hereinafter referred to as Providers, are every state administrative institution, corporation, independent institution

⁷Utama, I. A., Kusriyah, S., & Handoko, W. (2021). *Notary Responsibilities in Making Authentic Deeds for Interest of Community from Progressive Law Perspective*, in Sultan Agung Notary Law Review, Vol.3, No.3, URL. <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/16462>, p. 816

established under the law for public service activities, and other legal entities formed solely for public service activities."

The definition of public service itself can be found in Article 1 paragraph (1) Law on Public Services, where what is meant by public services are activities or series of activities in the context of fulfilling service needs in accordance with statutory regulations for every citizen and resident of goods, services, and/or administrative services provided by public service providers.

Decision Number: 11/PDT/2019/PT BGL in conjunction with Decision Number: 29/Pdt.G/2018/PN.Bgl which attracts a Notary as a Co-Defendant is closely related to public services. The issuance of the Sale and Purchase Deed Number 75 in this case is a public service provided by a Notary, to the plaintiff and the defendant who entered into a land sale and purchase agreement. The service for making the deed must be based on the request of the parties.⁸

Public services in the form of Issuance of Deed of Sale and Purchase Number 75 for the purposes of the plaintiff and defendant carried out by a Notary, as a public service provider. Issuance of Deed of Sale and Purchase Number 75 is an object of public service because this is a form of fulfilling service needs in accordance with the laws and regulations. The legislation that covers the legal actions of Issuance of Sale and Purchase Deed Number 75 is UUJN jo. UUJN-P. Meanwhile, both the plaintiff and the defendant are citizens who need the fulfillment of services for the issuance of the Sale and Purchase Deed Number 75 as referred to in Article 1 paragraph (1) of the Public Service Law.

The issuance of the Sale and Purchase Deed Number 75 carried out by the Notary Office, is a legal product that has complied with legal procedures as UUJN jo. UUJN-P. This is in accordance with providing legal certainty in the relationship between the plaintiff and the defendant as members of the community and the Notary Office as the provider of public services. Thus, the service in the form of the issuance of the Sale and Purchase Deed Number 75 is an act that is protected by law because it is in line with the purpose of providing public services, in accordance with Article 2 of the Public Service Law, namely:

"The law on public services is intended to provide legal certainty in the relationship between the community and the organizers of public services"

The issuance of the Deed of Sale and Purchase Number 75 is in accordance with the intent of the administration of public services. This suitability is because the

⁸Mushaffa, M. Z. (2020). *The Role of Notary in Binding The Security with Liability Rights*, in Jurnal Akta, Vol.7, No.4, URL. <http://jurnal.unissula.ac.id/index.php/akta/article/view/12889>, p.337.

issuance is in accordance with the UUJN jo. UUJN-P. Based on this, the act of issuing the Sale and Purchase Deed Number 75 is protected by the Public Service Act. This indicates the presence of legal certainty over human behavior, either individually or communally, which must be subject to and bound by law.

A Notary, as a Co-Defendant who does not submit the plaintiff's certificate cannot be considered as a refusal. Because the submission is a legal action, the submission of the certificate must also go through a legal mechanism. A request from a Notary as a Co-Defendant to submit the certificate through a court decision is a conditional legal action without a court decision, the surrender will result in legal consequences in the form of lawsuits from parties who feel aggrieved by the delivery of the certificate to the plaintiff.

The action of the Notary as a Co-Defendant who does not submit the plaintiff's certificate is the authority that belongs to him as a public official who keeps the Deed of Sale and Purchase Number 75 which is protected by Article 15 paragraph (1) UUJN jo. UUJN-P. The deposit of the Sale and Purchase Deed Number 75 to the Notary as a Co-Defendant is an agreement between the defendant and the plaintiff, where the submission should also be an agreement between the defendant and the plaintiff, not a unilateral request from the plaintiff. The actions of a Notary as a Co-Defendant from the aspect of public services are in accordance with the proportions because the purpose of public services as stated in Article 3 letter a of the Public Service Law, namely the purpose of public services is the realization of clear boundaries and relationships regarding rights, responsibilities, obligations.

Theoretically, a Notary as a Co-Defendant who does not submit a plaintiff's certificate must be seen as a form of legal protection for the dignity and worth, as well as an acknowledgment of human rights from arbitrariness. Otherwise, the act of submitting the certificate to the plaintiff will violate the dignity of the defendant. The handover of the certificate was a unilateral action from the plaintiff without regard to the rights of the defendant as the party who agreed to keep the Sale and Purchase Deed Number 75 Notary as a Co-Defendant, before the lawsuit was legally registered by the plaintiff.⁹

Notary as Co-Defendant who does not submit the plaintiff's certificate is a form of respect for the defendant's human rights from arbitrariness. From the aspect of legal protection, the act of submitting a certificate to the plaintiff is an arbitrary act of the Notary as a public official. The submission of the plaintiff's certificate has neglected the rights of the defendant who also agreed to save the

⁹Victoria, O. A., Ariyana, A. R., & Arifani, D. (2020). *Code of Ethics and Position of Notary in Indonesia*, in Sultan Agung Notary Law Review, Vol.2, No. 4, URL. <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>, p. 399.

plaintiff's certificate to a notary as an inseparable part of the sale and purchase agreement between the plaintiff and the defendant before a notary.

The issuance of the Sale and Purchase Deed Number 75 for the purposes of the plaintiff and the defendant and not submitting the plaintiff's certificate carried out by a Notary is an act protected by law under the Public Service Law. In certain cases, the notary deed is also an executive power.¹⁰

Based on the things that have been stated above, it can be seen that legal protection for a Notary in a land sale and purchase dispute in Bengkulu based on Decision Number: 29/Pdt.G/2018/PN.Bgl shows that legal protection for a Notary in a land sale and purchase dispute can be realized based on Article 15 paragraph (1) and Article 16 paragraph (1) letter a UUJN-P. These two norms provide legal protection to notaries from the aspect of authority regarding the issuance of authentic deeds and how their positions must be carried out. On the other hand, due to the sale and purchase not proceeding as stated in Article 1457 of the Civil Code, the obligation for the Notary to return it to the Plaintiff must have a strong legal basis. A very adequate legal basis is through a court decision ordering the Notary to return it to the Plaintiff.

4. Conclusion

The conclusions of this thesis research are: Legal protection for Notaries in land sale and purchase disputes in Bengkulu based on Decision Number: 29/Pdt.G/2018/PN.Bgl shows that legal protection for Notaries in land sale and purchase disputes can be realized based on Article 15 paragraph (1) and Article 16 paragraph (1) letter a UUJN-P . These two norms provide legal protection to notaries from the aspect of authority regarding the issuance of authentic deeds and how their positions must be carried out. On the other hand, due to the sale and purchase not proceeding as stated in Article 1457 of the Civil Code, the obligation for the Notary to return it to the Plaintiff must have a strong legal basis. A very adequate legal basis is through a court decision ordering the Notary to return it to the Plaintiff. Meanwhile, from the aspect of public services.

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Regulation:

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- [2] Act No. 25 of 2009 concerning Public Services
- [3] Act No. 30 of 2004 concerning the Position of a Notary
- [4] Code of Civil law