

Volume 1 No.2, April 2022 ISSN: 2828-4836



Juridical Implications of Making...(Eka Pratiwi)

Juridical Implications of Making of the Deed of Binding the Sale and Purchase of Land that Guarantees Individual Debt

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Abstract. As social beings, humans need other humans to meet their needs. What's more, the human need for land continues to increase, in line with the increasing human population in Indonesia. Fulfilling the need for the land, can be done by carrying out sale and purchase transactions, and transferring rights over the land in order to obtain valid legal certainty in accordance with applicable regulations. The more important the need for land, the more problems that arise related to the transfer of land rights. As with the buying and selling process in general, besides the subject and object that must be clear, in buying and selling land there will also be rights and obligations that must be fulfilled by both parties. If one party is negligent and does not fulfill its obligations, as stated in the agreement. As described above, the author is interested in conducting research with the title "Juridical Implications of Making Deeds of Sale and Purchase Binding of Land that Become Guarantees for Individual Debt". The formulation of the problem to be examined is (1) what are the juridical implications of making a Sale and Purchase Binding Deed for land objects that are collateral for individual debt, made by a Notary? (2) what is the position and responsibility of the parties to the Deed of the Sale and Purchase Agreement? (3) what is the form of the Deed of Sale and Purchase Agreement on the land that serves as collateral for individual debt? The research method used to obtain data in this study, uses a normative juridical approach, with descriptive research specifications analytical. This normative legal research is also referred to as library legal research, where library materials constitute basic data in (science) research which is classified as secondary data, and then analyzed qualitatively. Based on the results of research conducted by the author, it is known that the legal consequences of making the Deed of Agreement Binding Sale and Purchase Authorization, which is the object of sale and purchase in the agreement, is the object of collateral for the individual debt to be null and void. sale and purchase in the agreement, is the object of collateral for the individual debt to be null and void by law. The Buyer can apply for a return of payment for land, compensation or fines, due to non-fulfillment of the obligations of the Seller, as stated in the Sales and Purchase Agreement.

Keywords: Guarantees; Implications; Juridical.

1. Introduction

Humans live as social beings who interact with one another in group life. These groups can be in the form of small groups consisting of two people, medium society consisting of many people such as community associations, and the largest community such as the state.¹In social life, humans have goals in fulfilling all aspects of their needs, so that a relationship is needed between people with one another, in order to achieve a goal and also protect all their interests. Because of that, humans really need a rule that can regulate the relationship that occurs between them.

These rules are simple, but along with the increasing number of problems caused by human actions themselves, the rules are becoming increasingly difficult to formulate, thus requiring other parties to make, implement, and enforce them, in order to create order and order. In society, you can find various kinds of guidelines or measurements that aim to behave, which are called norms or rules. It can be defined as law.²

Indonesia is a country of laws. This has been emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a legal state, so all Indonesian people must be able to act with readiness to be responsible before the applicable law.³It begins with the opinion of Immanuel Kant who defines the rule of law state as a formal legal state (the state is in a static state or only a formality, which is commonly referred to as the Night Guard State / Nachtwakestaat). Meanwhile FJ Stahl, Continental European legal experts provide the characteristics of a rule of law (rechtstaat) as follows:⁴

- a. Recognition of human rights;
- b. Separation of State powers;
- c. Government based on law;
- d. There is Administrative Court.

One of the embodiments of social interaction in society is to carry out buying and selling transactions with each other to fulfill all their needs. Buying and selling according to Burgelijk Wetboek Civil Code article 1457 is an agreement in which

¹R. Soeroso, 2013, Introduction to Law, Sinar Graphic, Jakarta, p. 297.

²http://ernawintri. blogspot.co.id/2012/04/pengantar-ilmu- Hukum.html, accessed on 29 June 2022, at 17.02 WIB.

³The 1945 Constitution of the Republic of Indonesia

⁴Fatkhurohman, Dian Aminudin and Sirajudin, Understanding the Existence of the Constitutional Court in Indonesia, Bandung: Citra Aditya Bakti, 2004, p. 1.

one party binds himself to surrender an object and the other party pays the price that has been promised.⁵Whereas in Islam, the term buying and selling can be interpreted in several senses, including:⁶

1. According to Imam Taqiyuddin in the book Kiffayatul Al Akhyar: buying and selling is exchanging assets, accepting each other, can be managed (tasharruf) with a consent qabul, in a way that is in accordance with the syara.

2. According to Sayyid Sabiq in his book Fiqh Sunnah: Exchanging objects for other objects by mutual exchange or transferring property rights with a substitute in a permissible way.

One of the civil relations in buying and selling is with an agreement is made between the parties regarding something. The agreements that can be made by the parties also vary, according to the agreement and the needs of the parties who make it. For Muslims themselves, arrangements regarding sale and purchase agreements have been explained, as the Word of Allah SWT, in the Koran:

"O you who believe, if you don't do mu'amalah in cash for a specified time, you should write it down. and let a writer among you write it properly. and let the writer not be reluctant to write it down as Allah teaches him, then let him write, and let the person who is in debt dictate (what is to be written), and let him fear Allah his Lord, and let him not reduce the slightest from his debt."⁷

Where as arrangements regarding the agreement, according toThe law is contained in Book III of the Civil Code (Burgerlijk Wetboek). The definition of an agreement is explained in Article 1313 of the Civil Code which states that an agreement is an act by which one or more people bind themselves to one or more other people. The act of binding oneself as referred to in Article 1313 of the Civil Code implies that an agreement (overeenkomst) has emerged between the parties. The agreement itself contains a statement of will between the parties, thus the agreement is nothing but an adjustment of will between the parties.⁸

In the sale and purchase agreement there is also an agreement from the seller and the buyer in the form of an adjustment of will, in which the seller wishes to sell his goods and the buyer wishes to buy the seller's goods. The provisions in Article 1457 of the Civil Code state that the definition of buying and selling is an

⁵Burgelijk Wetboek , Civil Code, article 1457

⁶ https://journal.iainkudus.ac.id/index.php/Bisnis/article, accessed on June 29 2022 at 18.40 WIB ⁷Al Quran, Surah Al Baqarah verse 282

⁸M. Yahya Harahap, Legal Aspects of the Agreement, (Bandung: Alumni, 1986), p. 23.

agreement whereby one party binds himself to surrender an object, and the other party to pay a price.

From the understanding given by Article 1457 of the Civil Code above, a sale and purchase agreement imposes two obligations, namely:⁹

- 1. The seller's obligation to deliver the goods sold to the buyer; and
- 2. Obligation of the buyer to pay the price of goods purchased to the seller.

Meanwhile, the definition of goods that can be objects in a sale and purchase agreement is only goods that can be traded (Article 1332 of the Civil Code).

In the land sector, particularly for the sale and purchase of land, land sale and purchase agreements are carried out with a sale and purchase deed drawn up before the Land Deed Making Officer (PPAT), as contained in Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration.¹⁰However, in practice it is often found that the parties, namely the seller and the buyer, make a binding sale and purchase agreement as a preliminary agreement for the sale and purchase of land because the terms of the sale and purchase have not been met, such as the land certificate is not yet in the name of the seller or taxes have not been paid or payments are made in stages. /install.

Of course, it is permissible to make land sale and purchase binding agreements that are born in daily practice, although there is no such regulation in the Civil Code (Burgerlijk Wetboek). This is a consequence of the principle of freedom of contract adopted by contract law in Indonesia, that is as long as it does not conflict with laws and regulations, decency and order. Just like in other sale and purchase agreements, where in the binding agreement for sale and purchase of land, the prospective seller must be a person who can act freely on the land or in other words, the prospective seller is the owner of the land or a person authorized through power of attorney to act on behalf of the land owner who owns the land. become the object of binding sale and purchase.

The sale and purchase binding agreement itself can be made privately between the parties, with witnesses, or it can also be made in the form of an authentic deed drawn up before a Notary as a public official who is given the authority by law to make an authentic deed.¹¹Authentic deed essentially contains formal

⁹lbid., p. 181.

¹⁰Article 37 Government Regulation Number 24 of 1997 concerning Land Registration ¹¹See Article 1 point 1 of Law Number 30 of 2004 concerning the Position of Notary.

truths in accordance with what the parties notify the notary. As a public official authorized to make authentic deeds, the Notary has the obligation to include that what is contained in the notarial deed must be understood and in accordance with the wishes of the parties, namely by reading the contents of the deed, as well as providing access to information, including access to statutory regulations. -Relevant legislation for the parties signing the deed. So the parties can determine freely to agree or disagree with the contents of the notarial deed to be signed.

Act No. 30 of 2004, juncto Act No. 02 of 2014, concerning the Position of Notary, which regulates in detail, regarding the general position held by a Notary, so that it is hoped that the land sale and purchase binding agreement is in the form of an authentic deed made before a Notary, able to guarantee certainty, order and legal protection for the parties. The deed of binding sale and purchase agreement must be able to clearly regulate the contents of the deed of binding sale and purchase as well as the rights and obligations of the parties, so as not to cause problems in the future.

One of them, according to the case thatthe researchers will adopt in this study, where buying and selling is carried out when the land that is the object of buying and selling is still collateral for debts to other parties. In this case, the buyer has paid in full the sale and purchase price agreed between the two parties, in two payments. To obtain legal certainty for the sale and purchase, the seller and the buyer jointly bind themselves in a Deed of Agreement on Sale and Purchase Agreement, and the Power of Attorney before a Notary. Some time later, it was discovered that the seller had debts to his brother that were guaranteed by the land being traded.

2. Research Methods

The research method that will be used in this research is normative juridical law research, namely legal research in the sense of examining rules or norms.¹² Normative legal research is also referred to as library law research, where library materials are basic data in (science) research classified as secondary data.

This research is also analytical descriptive in nature which aims to accurately describe the nature of an individual, condition, symptom or certain group, or to determine the frequency of a symptom¹³, then an analysis of these symptoms is

¹²Sudikno Mertokusumo, Finding the Law of an Introduction, (Yogyakarta: Liberty, 2001), p. 29.

¹³Sri Mamudji, et al., Research Methods and Legal Writing, (Jakarta: Publishing Agency of the Faculty of Law, University of Indonesia, 2005), p. 4.

carried out. In this study, the researcher will explain the understanding of the agreement and the principles contained in the sale and purchase agreement, what are the things behind the making of the binding sale and purchase agreement and the Power of Attorney, which turns out to be the object being traded is a guarantee of a debt.

3. Results and Discussion

3.1. Review of the Deed of Sale and Purchase Agreement

The Deed of Sale and Purchase Agreement, made on April 25, 2020 at 13.00 Western Indonesia Time, is a deed regarding the sale and purchase binding agreement on a plot of land with freehold rights (HM) made between Mr. A as the prospective seller (First Party) and Mr. B as a prospective buyer (Second Party). They in this case are individuals who are the subject of the agreement. In the Deed of Sale and Purchase Agreement, it was agreed that Mr. A had sold a plot of land on the Certificate of Property Rights number: to the Second Party at a price of IDR 150,000,000.- (one hundred and fifty million rupiah). In Article 2 of the Deed of Sale and Purchase Agreement, it is stated that the payment for the land has only been paid in advance in the amount of IDR95,000,000.- (ninety-five million rupiah), which was paid directly in cash by Mr. B and was received by Mr. A at the time of signing the sale and purchase binding agreement deed, namely April 25, 2020, with evidence of a separate receipt, and or the deed serves as proof of receipt of the down payment. In the following article, the deed of binding sale and purchase agreement, it is agreed that the underpayment of IDR 55,000,000 (fifty five million rupiah) will be settled or paid in full, 2 months after the signing of the deed of binding sale and purchase agreement. Based on the Deed of Sale and Purchase Contract Agreement, both parties agreed that the proof of land ownership/certificate of ownership rights to the object of sale and purchase is kept by the Notary to check the certificate and to avoid misuse of the certificate.

As agreed in the Sale and Purchase Binding Agreement Deed, The Second party wishes to pay off the underpayment of the sale and purchase payment to Mr. A in the amount of IDR 55,000,000 (fifty five million rupiah), 2 months after.On June 20, 2020, the parties came back before the Notary, to continue the sale and purchase transaction, and asked to make a Deed of Agreement on Sale and Purchase Agreement and Power of Attorney, because the Second Party did not wish to immediately carry out the process of transferring their rights, due to insufficient funds for the process. Both parties agreed to come again before the Notary on the following day, to make settlement and to sign the agreed Deed of Sale and Purchase Agreement and Power of Attorney.

Finally, on June 19, 2020, both parties returned to the Notary, to make payment

of the underpayment for the purchase of land, amounting to IDR 55,000,000.-(fifty five million rupiah) in cash before the Notary. Upon the settlement of the payment for the land, a Deed of Sale and Purchase Agreement is drawn up, and Deed of Authorization to Sell, so that later it can be used by Mr. B to carry out the process of transferring rights over the land without involving Mr. A again. In the Deed of Sale and Purchase Agreement, has placed the rights and obligations for Mr. A and Mr. B, namely:

- 1. Seller's Obligations :
 - a. guarantees that the land and everything that is on it belongs to him, is not guaranteed in any way and is not burdened with any burdens, is not bound in an agreement with other parties and is free from all cases and encumbrances, so that the second party will not be disturbed and /or hindrance from anyone regarding it.
 - b. guarantees that as long as the sale and purchase of land has not been carried out before the authorized Land Deed Official, the seller will not mortgage or guarantee in any way, transfer and/or in other ways release or lease the land and buildings to other parties, and will not take any action which can harm the second party as authorized to do the job.
 - Seller Rights

The rights of the First Party are that the First Party has the right to receive payment of price payments for objects in the PPJB in accordance with the previously agreed agreement.

2. - The Buyer's obligation is to pay in full an amount of money to Seller, according to mutual agreement.

- While the right of the Buyer is that the Buyer has the right to accept the transfer of land rights from the Seller immediately after fulfilling all of the Seller's obligations for the sale and purchase, in good condition, well maintained and free from encumbrances or other problems relating to ownership of the land which is the object of the The Sales and Purchase Binding Agreement. Simultaneously with the settlement and making of the deed of the binding sale and purchase agreement, as well as the power of attorney to sell, the certificate of ownership of the land was handed over to Mr. B. One month later, it was discovered that the land was collateral for debts between Mr. A as the land owner and Mrs. C, who Incidentally, he still has a kinship relationship with Mr. A. Mrs. C admitted that he had given Mr. A a loan of IDR 100,000,000.- (one hundred million rupiahs), secured by land, on the same ownership certificate as sold to Mr. B. For her statement, Mrs. C showed evidence regarding her debts with Mr. A, by showing a sufficiently stamped underhand letter signed by both parties (Mr. A and Mrs. C), dated 18 February 2020, and has been warmerking by Notary on February 20 2020.

Because on the basis of trust and kinship, Mrs. C did not ask for a certificate on the land to be handed over to her. In the loan agreement, it is stated that Mr. A at that time needed a loan for his business, and would repay the loan periodically for five months, with additional profit sharing. According to Mrs. C's statement, Mr. A's debt was only IDR 30,000,000 (thirty million rupiah) paid back in two installments.

From the case examples above, it can be concluded that the results of the research, related to the formulation of the problem in this study:

1. The juridical implications arising from the making of the Deed of Sale and Purchase Binding Agreement accompanied by the Deed of Authorization to Sell, can be interpreted as legally flawed. This is because the object of sale and purchase in the deed is collateral for the seller's loan to another party, which should not be allowed to trade the collateral object, without the lender's permission. Even in Islamic law, this is clearly prohibited.as the word of Allah SWT in QS An-Nisa' verse 29 which reads:¹⁴

"O you who believe, do not eat one another your neighbor's wealth in a false way, except by the way commerce that goes on voluntarily between you."

Sale and purchase of land, which occurred in this case included in the sale and purchase containing gharar,¹⁵namely buying and selling which contains elements of fraud, and it is clear that such a thing is an evil.

¹⁴Ministry of Religion of the Republic of Indonesia, Translation of the Qur'an and Tajweed, (Bandung; PT. Sygma 2014) p.83

¹⁵ Amir Syarifuddin, Outlines of Fiqh, (Jakarta: Kencana, 2003), p. 201

However, the Deed of Sale and Purchase Agreement and Selling Authorization is an authentic deed drawn up by an authorized official, so that san authentic deed shown must be considered and treated as an authentic deed unless it can be proven otherwise, that the deed is not an authentic deed. As long as it cannot be proven otherwise, the deed is attached to the strength of external evidence. From the explanation above, the external evidentiary power of an authentic deed attaches to the principle of the legal presumption that every authentic deed must be considered true as an authentic deed, until another party is able to prove otherwise, and the deed becomes null and void, based on a court decision. This means that the binding sale and purchase agreement is deemed to have never existed, and has no legal consequences since its inception. Thus, all payment obligations must be returned in full, to restore the condition as before as if there had never been a sale or purchase.

- 2. The responsibilities of the parties for making the Deed of Sale and Purchase Binding Agreement and Selling Authorization, are in accordance with what was agreed in the agreement. In an agreement, it will definitely regulate the rights and obligations of the parties that must be fulfilled in order to get an agreement between the two, so that a sale and purchase transaction occurs that is desired by both parties. The obligations of the seller and the buyer in the Sale and Purchase Binding Agreement include:
- Seller's Rights and Obligations
- a. Seller Rights

The seller's right in the sale and purchase agreement is to receive the entire payment price in accordance with what has been agreed.

b. Seller's Obligations

Article 1473 of the Civil Code states that sellers have 2 (two) main obligations, namely:

- The seller's obligation to deliver the goods sold to the buyer.
- The seller's obligation to provide coverage.

The seller's obligation to deliver the goods sold to the buyer is an act of transferring the goods sold into the power and ownership of the buyer. In buying and selling, apart from real delivery (feitelijk levering), juridical surrender (juridische levering) is also required so that the buyer's ownership becomes perfect. Matters that must be submitted by the seller to the buyer are regulated in Article 1482 of the Civil Code, namely:

1. Everything that becomes the equipment of the goods sold and is intended for permanent use.

2. Letters of proof of ownership of the object, if the said proof documents do exist.

Meanwhile, the obligation of the seller to provide coverage for the goods he sells is in accordance with the provisions of Article 1491 of the Civil Code, where the seller must bear/guarantee the goods sold in the following conditions:¹⁶

1. Serene and peaceful in the power of ownership of the buyer without being disturbed by anyone.

Underwrite or guarantee the goods sold for all claims and beslag executorial. The seller's guarantee of execution must be regarding all or part of the goods. The seller must guarantee against the possibility that there is an inherent right of a third person who can request the execution of the goods sold. Regarding the basis of the third person's rights over the object being sold, it turns out that it belongs to a third person as a mortgage/fiduciary/pledge/mortgage holder, so the seller is not the person entitled to the item he is selling. If the goods are confiscated or executed in order to pay the seller's debt to a third party, the buyer has the right to claim back from the seller (Article 1492 Civil Code):

purchase price refunds;

 return of the proceeds if he is obligated to hand over said proceeds to the owner who demands the surrender;

 costs incurred in connection with the claim of the buyer to be borne, as well as costs incurred by the original plaintiff;

 reimbursement of costs, losses and interest, together with the cost of the case regarding the purchase and delivery thereof, only that has been paid by the buyer.

Furthermore, in Article 1502 of the Civil Code it more specifically regulates the responsibility of the seller for all the burden he places on the goods sold, if the goods are borne by a third party, the buyer can request cancellation of the sale and purchase or ask for compensation for the burden incurred. lies in the thing.

2. Guarantee that the goods sold do not have hidden defects and obvious defects.

¹⁶Ibid., p. 196-199.

Article 1504 of the Civil Code requires the seller to guarantee hidden defects in the goods he sells. If the seller also does not know about these hidden defects, then this is not a problem and the seller remains responsible (Article 1506 of the Civil Code).

Defects here result in the goods purchased by the buyer not being used perfectly according to their intended purpose or resulting in a reduction in the benefits of the object for its intended use.

claims or actions against hidden defects, the buyer can file a claim or action to cancel the sale and purchase with the original provisions being brought forward in a short time, with the details as stipulated in article 1508 of the Civil Code:

- If the defect is known from the beginning by the seller, then the seller must:
- 1. return the seller's price to the buyer; and
- 2. plus the payment of compensation consisting of costs, losses and interest.

• If the defect is truly unknown to the seller himself, the seller is only obliged to return the selling price and the costs incurred by the buyer when purchasing and delivering the goods.

• If the item purchased is destroyed as a result of hidden defects, the seller is still obliged to return the price.

-Buyer's Rights and Obligations

a. Buyer's Rights

The right of the buyer in the sale and purchase agreement is to obtain property rights and enjoyment and a sense of security over the goods that are the object of the sale and purchase.

b. Buyer's Obligations

The most important obligation of the buyer is to pay the price (Article 1513 Civil Code) where the buyer must complete the settlement of the price together with the delivery of the goods. Buying and selling will be meaningless without paying the price. That is why Article 1513 of the Indonesian Civil Code as an article determining the buyer's obligations is included as the first article which regulates the buyer's obligation to pay the price of the goods purchased.

As stated in the Law, in this case the position of the seller can be said to be in default of the agreement, because the seller does not fulfill his obligations as stated in Article 6 in the Deed of the Sale and Purchase Agreement (attached). While the rights of the seller have been fully fulfilled, because the money for the sale price of the land has been fully received or paid off by the seller. The buyer has the right to claim compensation from the seller because his obligation to pay an amount of money in this sale and purchase has been paid in full according to what was agreed in the agreement, but his right to be able to process the transfer of rights over the land is constrained, due to disturbances/claims from other parties.

The form of the Deed of Binding of Sale and Purchase of land which is the collateral for individual debts, is basically the same as the Deed of Binding of Sale and Purchase in general. As in the case example above, the receivable agreement is known after the sale and purchase transaction occurs, so the sale and purchase transaction process and the making of the deed are the same as the binding deed of sale and purchase in general.

4. Conclusion

Juridical implications or legal consequences of making the Deed of Sale and Purchase Binding Agreement and Selling Authorization, the object of sale and purchase in the agreement, is the object of collateral for the individual debt to be null and void because it violates the objective requirements of the provisions of Article 1320 of the Civil Code regarding non-fulfillment of conditions third and fourth from the validity of an agreement, namely a certain matter and a lawful cause, where the achievement which is something that must be fulfilled by the seller to the buyer is not fulfilled, and the object of the agreement is still related to being a guarantee for a debt to another party. As agreed in the Sale and Purchase Binding Agreement Deed, the Buyer can apply for a return of land payments, compensation, fines, due to non-fulfillment of the Seller's obligations, to guarantee the condition of the land/object of sale and purchase in the agreement, free from interference or claims from other parties.

5. Refrences

Books:

- [1] Amir Syarifuddin, Garis-GarisBesar Fiqh, (Jakarta: Kencana, 2003)
- [2] Fatkhurohman, Dian Aminudin dan Sirajudin, Memahami Keberadaan Mahkamah Konstitusi di Indonesia, (Bandung:Citra Aditya Bakti, 2004)
- [3] Kementerian Agama RI, Al-Qur'an Terjemahnya dan Tajwid, (Bandung; PT.

Sygma 2014)

- [4] M. Yahya Harahap, Segi-Segi Hukum Perjanjian, (Bandung: Alumni, 1986)
- [5] R. Soeroso, Pengantar Ilmu Hukum, (Jakarta : Sinar Grafika, 2013)
- [6] Sri Mamudji, *et al., Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005)
- [7] Sudikno Mertokusumo, *Penemuan Hukum Suatu Pengantar*, (Yogyakarta: Liberty, 2001)

Regulation:

- [1] The 1945 Constitution of the Republic of Indonesia
- [2] Code of Civil law
- [3] Act No. 7 of 1992 concerning Banking.
- [4] Act No. 2 of 2014 concerning the Position of Notary
- [5] Government Regulation number 24 of 1997regarding Land Registration

Internet:

- [1] http://ernawintri. blogspot.co.id/2012/04/pengantar-ilmu- Hukum.html
- [2] https://kbbi.web.id/implication,
- [3] <u>https://penerbitbukudeepublish.com/goals-penelitian</u> https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/3074