

The Juridical Implications for the Cancellation of the Deed of Sale of Rights Caused Due to the Criminal Action of Fraud

Aji Maulana

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: aji_aji_04@yahoo.co.id

Abstract. *This research aims to analyze the juridical implications of canceling the deed of sale and purchase of land rights caused by criminal acts of fraud in Tegal Regency. This research is a descriptive research with a sociological approach. Data collection was carried out through interviews, literature studies and documentation studies. Data analysis was carried out in a qualitative descriptive manner. This research shows that the juridical implication of canceling the deed of sale and purchase of land rights is due to a criminal act of fraud based on the provisions of Article 1321 of the Civil Code, namely that the agreement is deemed to have never existed and can be filed for cancellation based on Article 1328 in conjunction with Article 1449 of the Civil Code. The party committing the fraud must provide compensation to the injured party in the event that the cancellation of the said sale and purchase deed causes a loss.*

Keywords: Cancellation; Land; Sale.

1. Introduction

PPAT is a general official authorized to make authentic deeds as long as the making of certain deeds is not specific to other public officials.¹ The deed of sale and purchase of land drawn up by the PPAT as an authentic deed has an important function in social life. The need for written evidence, in the form of authentic deeds, is increasing in line with the growing demand for legal certainty which is one of the principles of a rule of law state. The deed of sale and purchase of land drawn up by the PPAT is a perfect, strongest and full proof tool so that apart from being able to guarantee legal certainty, a notary deed can also

¹Ratih Mega Puspa Sari, Sidik Purnama, Gunarto, "The Role of PPAT in Land Certification as a Result of Sale and Purchase", Deed Journal, Vol 5 No 1 March 2018, p. 242.

avoid disputes. Pouring out an act, agreement, stipulation in the form of a notarial deed is considered better than putting it in a private letter, even though it is signed on a stamp duty, which is also strengthened by the signatures of the witnesses.²

PPAT services as officials who are given authority are very helpful for some people, especially for people who are unfamiliar with the law. Some people who do not understand the law feel unable to solve the legal problems they face, because the community has limited knowledge of the law. Some people consider the existence of PPAT very useful and very helpful in finding solutions to community legal problems, especially land law.³One of the authorities possessed by PPAT is to make a Sale and Purchase Deed (AJB) as one of the conditions for transferring land rights due to buying and selling.

According to the provisions of the BAL, land purchases are no longer made in the presence of a customary head or village head privately, but in the presence of a PPAT or temporary PPAT if a PPAT has not been appointed in a sub-district area.⁴The role of the PPAT in the sale and purchase of land in question is to draw up a Deed of Sale and Purchase of Land.

In fact, sometimes there are problems in the transfer of land rights due to buying and selling, namely there are parties who feel disadvantaged from the transfer of land rights due to the sale and purchase. Problems that often arise include parties who do not feel they have sold land to other parties, but ownership of the land has shifted to other parties. These problems can occur due to the actions of parties with bad intentions in buying and selling land, such as forgery in the deed of buying and selling land and or fraud. If in the sale and purchase of land there are parties who feel aggrieved, they can demand cancellation of the deed of sale and purchase of land. The problem is what are the legal consequences of canceling the land sale and purchase deed because there has been a transfer of land rights due to the sale and purchase.

²Arief Rachman, 2011, Authenticity of Authentic Deeds, <https://notarisarief.wordpress.com/2011/05/15/otentisitas-a-akta-autentik/>, accessed March 1, 2023.

³Kusmaryanto, Gunarto, "Registration of Sale and Purchase Deeds that Exceed the Land Registration Period at the Agrarian and Spatial Planning Office/National Land Agency for the City of Semarang", *Journal of Deeds*, Vol. 4 No. 3 September 2017, p. 476

⁴Edi Asrofin, Umar Ma'ruf, "The Implications of Signature Falsification in the Deed of Sale and Purchase of Land Carried Out by PPAT", *Journal of Deeds*, Vol. 4 No. 2 June 2017, p. 162.

All authentic deeds are fundamentally possible in which there is incorrect data and information either due to falsification and/or fraud. As long as the things listed in the authentic deed are not the actual things as desired or as if what is listed in the authentic deed are true but are actually things that are not true, then the authentic deed can be said to be an authentic deed that false. Examples of things that can be forged in an authentic deed include the signatures and identities of the parties and the positions of the parties, for example the land seller is not the owner of the land as stated in the deed.

The crime of counterfeiting is categorized as a crime of fraud, if someone gives an overview of the condition of an item (letter) as if it were original or had the truth. Because the description referred to by other people is deceived and believes that the conditions described on the item/letter are true or genuine. Forgery of writing/letter occurs when the contents of the letter are incorrectly described as true.⁵

One example of a fraud case in a sale and purchase deed is Decision Number. 38/Pdt/G/2012/PN.Slw. In this case, it started from a land sale and purchase agreement between the plaintiff and the defendant. The plaintiff has paid the full price of the land. However, the plaintiff cannot yet own the land certificate because the said land certificate belongs to the legal owner of the land. It turns out that the land sold by the defendant to the plaintiff has not become his legal land but is still in the sale and purchase agreement with the legal owner of the land which has not been paid in full.

2. Research Methods

The approach method used is the sociological approach, looking at the operation of law in society or the law interacting with society. This study uses research specifications in the form of descriptive analytical research. The analysis was carried out in a descriptive analytical manner.

3. Result and Discussion

Particularly in Tegal Regency, land sale and purchase transactions are part of activities to fulfill the need for land for various purposes, such as settlements. The land sale and purchase transaction was not spared from various problems that gave rise to land disputes such as fraud in it which caused the AJB to be

⁵RIGHTS Moch. Anwar. 2002, Criminal Law in the Economic Sector. Citra Aditya Bakti, Bandung. p. 128.

cancelled. One example of the cancellation of the deed of sale and purchase of land rights due to a criminal act of fraud in Tegal Regency is as stated in the Decision of the Slawi District Court Number: 38/Pdt/G/2012/PN.Slw.

The case involved the plaintiff and 4 (four) defendants. The incident began in November 2011, when the plaintiff and Defendant III bought and sold a piece of land. The object of the sale and purchase of land in question is in the form of a paddy field located in Karangmangu Village, Tarub District, Tegal Regency, as stated in the Certificate of Property Rights No. 99/Karaugmangu Persil 77, with an area of 760 M2, on behalf of Sulistyowati (Defendant I) hereinafter referred to as object of dispute.

The sale and purchase of the disputed land began with the plaintiff's meeting with Defendant III who claimed to be the owner of the disputed object. Based on the agreement on the sale and purchase of the land object of the dispute, the Plaintiff and Defendant III agreed to come to meet Defendant IV (PPAT) at his office to carry out a sale and purchase transaction. Before Defendant IV at his office, Defendant III claimed to be the owner of the disputed object but had not yet reversed the name or land of the disputed object which was still named the owner of Sulistyowati (Defendant I). It was further discovered that Defendant III in fact entered into a sale and purchase transaction of the object of land dispute with Defendant II where Defendant II was the seller and Defendant III was the buyer.

The Panel of Judges of the Slawi District Court in their legal considerations stated that the land sale and purchase agreement between the plaintiff and Defendant III was null and void as well as the deed of sale and purchase of the disputed object of land between the plaintiff and Defendant III whose signatures were in the form of the AJB were declared null and void.

The consideration of the Panel of Judges referred to was based on the evidence of Defendant I and Defendant II, especially evidence in the form of a copy of the decision of the criminal case on behalf of Defendant III, it turned out that Defendant III committed a criminal act of fraud against the Plaintiff, on the basis of this evidence, the agreement entered into by the Plaintiff and Defendant III which does not have the capacity as the owner of the land is legally flawed because it does not fulfill one of the legal requirements of an agreement, namely a lawful cause, so that the agreement does not have force or is null and void, and that an agreement born due to deception contains a flawed will, so that legally it does not have binding force for the parties. According to Article 1321 of the Civil Code that "no agreement has any power if it is given due to an oversight or is obtained due to coercion or fraud", so that the actions of Defendant III are unlawful.

Based on the case examples above, it appears that there was a criminal act of fraud in making the AJB of land between the Plaintiff and Defendant III. The crime of fraud referred to has received a court decision that has permanent legal force which is submitted as evidence in the trial.

The Panel of Judges in their legal considerations stated that the agreement entered into by the Plaintiff and Defendant III who did not have the capacity as the owner of the land was legally flawed because it did not fulfill one of the legal requirements of an agreement, namely a lawful cause, so that the agreement did not have force or was canceled for the sake of law, and that an agreement born by deception contains a flawed will, so legally it does not have binding force for the parties. According to Article 1321 of the Civil Code that no agreement has any force if it is given due to an oversight or obtained due to coercion or fraud.

Based on this, the juridical implication of the cancellation of the deed of sale and purchase of land rights due to a criminal act of fraud in the case referred to is that the agreement was deemed to have never existed and the party committing the fraud must provide compensation to the aggrieved party.

The terms of the agreement that have been regulated in Article 1320 of the Civil Code can be categorized into two, namely subjective conditions and objective conditions. Subjective terms include agreement and competence, namely regarding the parties who are the subject of making an agreement. If the subjective conditions are not met, then either party has the right to request that the agreement be cancelled. That is, the agreement that has been made remains binding as long as it is not canceled by the judge at the request of the party entitled to request cancellation of the agreement. While the objective conditions include a certain matter and a lawful cause, namely regarding the object of the legal action specified in the agreement. If the objective conditions are not met.⁶

Based on the case examples above, the conditions that are not fulfilled are objective conditions. Objective requirements are conditions regarding the object of the agreement. In this case, the object of the agreement is the sale and purchase of land carried out by deception or deception. This means that the terms of the lawful cause in the said agreement are not fulfilled so that the agreement is null and void or it can be said that the agreement has never existed so that the injured party, in this case can ask for compensation from the Defendant because the Plaintiff has made payment in full to Defendant III.

Article 1335 of the Civil Code states that an agreement made without cause or which has been made for a false or prohibited reason has no force. This article

⁶Subekti, 1980, *Legal Aspects of National Engagement*, Alumni, Bandung, p. 13

explains that if an agreement is made without lawful reasons then the agreement does not have legal force so it is null and void.

Based on Article 1320 of the Civil Code mentioned above, the cancellation conditions can be divided into two, namely: a. Can be canceled, namely if an agreement violates the provisions of Article 1320, namely the agreement of those who are binding and the ability to make agreements. b. Canceled By Law, namely if an agreement violates the provisions of Article 1320, namely a certain matter and a lawful cause.

Defect of will (*wilsgebreken* or defect of consent) is a defect in the formation of an agreement in a contract or agreement. This defect of will is an incomplete agreement.⁷ According to Article 1321 of the Civil Code, an agreement contains defects of will if the agreement occurs based on coercion (*dwang*), oversight (*dwalling*), or fraud (*bedrog*).

According to the provisions of Article 1328 paragraph (1) of the Civil Code "Fraud is a reason for canceling an agreement, if the trick used by one of the parties is such that it is clear and obvious that the other party did not make the agreement if the trick was not carried out the." Furthermore, Article 1328 paragraph (2) of the Civil Code states that "Fraud is not suspected, but must be proven."

Based on Article 1328 of the Civil Code, the party who is deceived must prove that the opponent has committed fraud. To prove the argument for the lawsuit, the plaintiff can submit evidence. The means of proof that can be submitted by the plaintiff as stated in Article 1866 of the Civil Code are as follows: a. Written evidence b. Witness evidence c. Predictions d. Confession, and e. Oath.

In the case of buying and selling land as the object of the dispute, that in order to prove that Defendant III had committed fraud, the Defendant submitted evidence in the form of a court decision regarding the criminal act of fraud committed by Defendant III. In this case the act of fraud committed by Defendant III has received a judge's decision that has permanent legal force. Based on this evidence, the plaintiff filed a lawsuit for compensation against the actions of Defendant III.

As a result of an agreement that does not meet the subjective requirements, namely an agreement where there is a defect in the will in the form of fraud, the agreement can be canceled. So in other words, cancellation of an agreement can be requested if there is no agreement that is free to make good agreements because there has been an oversight, coercion or fraud on one of the parties to

⁷Ridwan Khairandy, 2014, Indonesian Contract Law in a Comparative Perspective, FH UII Press, Yogyakarta, p. 217.

the agreement at the time the agreement was made as stipulated in Articles 1321 to 1328 of the Civil Code.⁸As also stated in Article 1449 of the Civil Code that agreements made by force, oversight or fraud issue a demand to cancel them. In an application to annul an agreement can be filed in a civil lawsuit to the District Court.

Based on the description above, it can be concluded that the juridical implication of the cancellation of the deed of sale and purchase of land rights due to a criminal act of fraud is that the agreement is deemed to have never existed and can be filed for cancellation based on the provisions of Article 1328 in conjunction with Article 1449 of the Civil Code. The party committing the fraud must provide compensation to the injured party in the event that the cancellation of the said sale and purchase deed causes a loss.

If it is related to the theory of legal certainty, the actions of the Plaintiff who filed a lawsuit against the Defendants is an attempt by the Plaintiff to obtain legal certainty regarding legal events related to the loss he experienced in connection with the sale and purchase of the object of the disputed land in which there was fraud committed by Defendant III. Which certainty includes compensation for losses suffered by the Plaintiff.

Judging from the theory of legal certainty that in order to provide legal certainty, a land sale and purchase agreement that is affixed to AJB as desired by the parties must meet the requirements for the validity of the agreement as stipulated in Article 1320 of the Civil Code, which includes the existence of an agreement for those who bind themselves; the ability of the parties to make an engagement; a certain thing; and a lawful cause. Non-fulfillment of the legal requirements of an agreement can result in the consequence of an agreement being null and void or the possibility of canceling an agreement.

The conditions for the validity of the said agreement are related to the subject and object of an agreement. The first and second conditions relate to the subject of an agreement or subjective conditions. The third and fourth conditions are requirements related to the object of the agreement or objective conditions. The distinction between the two conditions for the validity of the said agreement relates to the issue of the cancellation of an agreement, namely regarding the null and ab initio of an agreement and the cancellation of an agreement (*vernietigbaar* = voidable).

If an objective requirement of an agreement is not fulfilled then the said agreement becomes null and void or an agreement that has been canceled from

⁸Gunawan Widjaja and Kartini Muljadi, 2003, The Elimination of Engagement, ed.1 cet 1, Raja Grafindo Persada, Jakarta, p185.

the start, the law considers that the agreement never existed or an agreement has never occurred. If the subjective requirements are not fulfilled, then the said agreement can be canceled or canceled or as long as the said agreement has not been or has not been canceled based on a court decision, then the said agreement is still valid.

Based on this, in the dispute between the plaintiff and the defendant in this study there were subjective and objective conditions in the agreement that were not fulfilled so that legal certainty was not fulfilled. Subjective conditions were not fulfilled due to defects in will in the form of fraud committed by Defendant III as the subject of the agreement which caused the agreement to be cancelled. In objective conditions, the non-fulfillment of the conditions for a lawful cause (*causa*) causes the agreement to be null and void, that is, the agreement never existed or an agreement never occurred.

Based on this, it can be said that the criminal act of fraud in making an agreement can be seen in two aspects of the conditions for the validity of the agreement, namely the subjective aspect of the agreement and the objective aspect of the agreement. On the subjective aspect of the agreement related to the subject or maker of the agreement. The existence of a criminal act of fraud indicates that there is something that is not a perfect agreement. In addition, the defects of will experienced by the parties making the agreement, namely that there is no agreement that is free to make good agreements because there has been an oversight, coercion or fraud against one of the parties to the agreement at the time the said agreement was made as stipulated in Articles 1321 to 1328 of the Civil Code so that the agreement can be cancelled.

On the objective aspect of the criminal act of fraud in the agreement shows the non-fulfillment of the requirements for a cause (lawful) that is lawful. This is because the land sale and purchase agreement is a lawful act when it is carried out according to the terms of sale and purchase according to the regulations governing buying and selling both according to positive law and Islamic law. Halal requirements for buying and selling are not fulfilled because of the criminal act of fraud which is an act that violates the norms in people's lives, both legal norms and religious norms. This causes legal certainty regarding the objective conditions of the agreement to be not fulfilled so that the agreement is null and void.

The court decision is also part of the legal certainty regarding the cancellation of the land sale and purchase deed made between the Plaintiff and Defendant III. Null by law, the land sale and purchase agreement as the disputed object gives the consequence that the land sale and purchase agreement is deemed to have never existed so that the party causing the loss from the said land sale and purchase agreement must compensate the loss to the aggrieved party. In the

case of buying and selling land as the object of the dispute, Defendant III caused losses to the Plaintiff in the form of payment of the land price which had been paid in full by the Plaintiff so that Defendant III had to compensate the Plaintiff for the loss.

4. Conclusion

The juridical implications for the cancellation of the deed of sale and purchase of land rights due to a criminal act of fraud based on the provisions of Article 1321 of the Civil Code, namely that the agreement is deemed to have never existed and can be filed for cancellation based on the provisions of Article 1328 in conjunction with Article 1449 of the Civil Code. The party committing the fraud must provide compensation to the injured party in the event that the cancellation of the said sale and purchase deed causes a loss.

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